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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1967

No. 58

W. WILLARD WIRTZ, SECRETARY OF LABOR,
PETITIONER

vs.

LOCAL UNION NO. 125, LABORERS'
INTERNATIONAL UNION OF NORTH AMERICA,
AFL-CIO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 3, 1967
CERTIORARI GRANTED MAY 15, 1967

Supreme Court of the United States

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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO EASTERN DIVISION

Civil Action File No. C 64-99

[File Endorsement Omitted]

W. WILLARD WIRTZ, Secretary of Labor, United States Department of Labor, PLAINTIFF

v.

LOCAL UNION NO. 125, INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABORERS' UNION OF AMERICA, DEFENDANT

COMPLAINT—Filed February 7, 1964

I.

Plaintiff brings this action under Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (Act of September 14, 1959, 73 Stat. 519 *et. seq.*, 29 U.S.C. 401 *et. seq.* (1958 ed. Supp. IV)), hereinafter referred to as the Act.

II.

Jurisdiction of this action is conferred upon the Court by Section 402(b) of the Act (29 U.S.C. 482(b)).

III.

Defendant Local Union No. 125, International Hod Carriers' Building and Common Laborers' Union of America, hereinafter referred to as Defendant Local, is and at all times relevant to this action has been, an unincorporated association maintaining its principal office at 29 Fifth Avenue in the City of Youngstown, County of Mahoning, State of Ohio, within the jurisdiction of this Court.

[fol. 2]

IV.

Defendant Local is, and at all times relevant to this action has been, a local labor organization engaged in an industry affecting commerce within the meaning of Sections 3(i), 3(j) and 401(b) of the Act (29 U.S.C. 402(i) and 402(j) and 481(b)).

V.

Defendant Local, purporting to act pursuant to and in accordance with the constitution of the International Hod Carriers' Building and Common Laborers' Union of America, hereinafter referred to as the International, and Defendant Local's constitution, conducted an election of officers which consisted of an election held on June 8, 1963, and a run-off election for the office of Business Representative on July 13, 1963. Said elections were subject to the election provisions of Title IV of the Act.

VI.

By letter dated August 11, 1963, a member in good standing of Defendant Local, acting pursuant to and in accordance with the International's constitution and the constitution of Defendant Local filed a protest and appeal to the General Executive Board of the International Union concerning the conduct of the July 13, 1963 run-off election. Having received a final denial of his protest by the General Exeuctive Board by letter dated December 2, 1963 the member on December 9, 1963 filed a timely complaint with the plaintiff herein, alleging violations of Section 401 of the Act (29 U.S.C. 481), all in accordance with Section 402(a) of the Act (29 U.S.C. 482(a)).

[fol. 3]

VII.

Pursuant to Section 402(b) of the Act (29 U.S.C. 482 (b)), Plaintiff proceeded to investigate said complaint and, as a result of facts shown by said investigation, found probable cause to believe that violations of Title IV of the Act had occurred with respect to both elections referred to in paragraph V and had not been remedied at the time of institution of this suit, and that such violations may have affected the outcome of said elections.

VIII.

Defendant Local violated Title IV of the Act regarding the elections conducted on June 8, 1963 and July 13, 1963 in the following respects:

(a) Defendant Local failed to provide adequate safeguards to insure a fair election on June 8, 1963, in violation of Section 401(c) of the Act (29 U.S.C. 481(c)) by permitting unauthorized ballots to be used and counted and by failing to provide adequate safeguards.

(b) Defendant failed to conduct the elections of June 8, 1963 and July 13, 1963 in accordance with its aforesaid applicable constiutional provisions, in violation of Section 401(e) of the Act (29 U.S.C. 481 (e)), as follows:

(1) Members not in continuous good standing were permitted to be candidates in the elections of June 8, 1963 and July 13, 1963;

(2) Members delinquent in dues for April, 1963 were permitted to vote on June 8, 1963;

[fol. 4] (3) Members who had not completed payment of readmission fees were permitted to vote on June 8, 1963;

(4) Members who had not paid the constitutionally required readmission fees were permitted to vote on June 8, 1963;

(5) Members delinquent in dues for May, 1963 were permitted to vote at the July 13, 1963 run-off election;

(6) Members who had not completed payment of readmission fees were permitted to vote at the July 13, 1963 run-off election;

(7) Members who had not paid the constitutionally required readmission fees were permitted to vote at the July 13, 1963 run-off election.

IX.

The violations of Section 401 of the Act (29 U.S.C. 481) found and alleged above may have affected the outcome of the elections of June 8, 1963 and July 13, 1963.

WHEREFORE, Plaintiff prays for judgment.

(a) declaring the following elections to be null and void;

i. the election of its officers held by Defendant Local on June 8, 1963;

ii. the run-off election held for the office of Business Representative held on July 13, 1963;

[fol. 5] (b) enjoining and restraining Defendant Local, its officers, agents, servants, employees, attorneys and all persons in active concert or participation with them from concealing, selling, conveying, transferring, or otherwise disposing of any property or assets belonging to said defendant or in which it has any direct or indirect interest until further order of the Court;

(c) directing the conduct of a new election of officers under the supervision of the plaintiff;

(d) for the costs of this action; and

(e) for such other relief as may be appropriate.

/s/ John W. Douglas
Assistant Attorney General

/s/ Merle M. McCurdy
United States Attorney

/s/ Harland F. Leathers
Attorney, Department of Justice

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CHARLES DONAHUE
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U. S. Department of Labor
Of Counsel

[fol. 6]

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil Action No. C 64-99

[File Endorsement Omitted]

W. WILLARD WIRTZ, Secretary of Labor,
United States Department of Labor, PLAINTIFF

vs.

LOCAL UNION NO. 125, INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABORERS' UNION OF AMERICA, DEFENDANT

DEFENDANT'S MOTION TO DISMISS PART OF THE COMPLAINT

OPINION—July 13, 1964

CONNELL, Chief Judge

On February 7, 1964, the Secretary of Labor brought complaint against the defendant union under the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519 *et seq.*, 29 U.S.C.A. § 401-530, hereinafter referred to as LMRDA. The plaintiff seeks to void the election of officers in 1963, compel a new election under the aegis of the federal government, and to restrain those presently holding office from disposing of the assets of the union.

From the complaint, the allegations of which we must accept as true for the purposes of this motion, we recognize these uncomplicated facts which have brought this case here. On June 8, 1963, the union held an election; all offices were filled except that of Business Representative, where the vote ended in a tie. Consequently, a runoff election was held on July 13, 1963 for that office alone. After this election, a member in good standing (as yet unnamed) lodged a protest with the union against the conduct of that

[fol. 7] election. Having received a denial of his protest, he filed a timely complaint with the Secretary of Labor, alleging violations of 29 U.S.C.A. § 401. After investigation and consideration, the Secretary instituted this action which complains not only of irregularities in the conduct of that run-off election, but also attacks the first election.

The defendant now moves to dismiss that portion of the complaint which is directed to the election of June 8, 1963, on the ground that the statute (29 U.S.C.A. § 482 (a)[1] permits suit by the Secretary only at the instance of a complaining member who has exhausted his internal avenues of protest. There is no allegation that a member complained internally about the conduct of that June 8 election. The plaintiff resists the motion on three grounds: (1) that the run-off election was such an integral part of the whole election that complaint against it reaches to the entire election; (2) the legitimate inquiry by the Secretary addressed to the election of July 13, 1963, uncovered irregularities which must be corrected in the interest of the [fol. 8] public; (3) The exhaustion of remedies is not an absolute requirement, so the Court in its discretion is empowered to disregard the absence of internal attack upon the election of June 8.

We cannot agree with the Secretary that exhaustion of the member's right of protest within the union against

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[1] § 482. Enforcement—Filing of complaint; presumption of validity of challenged election

(a) A member of a labor organization—

(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or

(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation, may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 481 of this title (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

the run-off election operates to bring the whole election under the scrutiny of the Secretary and the jurisdiction of this Court. The plaintiff argues strongly that the two polls are but two elements of a single transaction, so that attack by the member upon the balloting on July 13 is really an attack upon the entire election. To support this contention, the plaintiff directs the Court's attention to Webster's New Collegiate Dictionary 761 (1961), which defines "run-off" as "a final race, contest, or the like, to decide an earlier one that has ended without a decision in favor of any one competitor." Though this definition, and common sense, establish a strong logical relationship between these two polls, it must be remembered that the complaint is directed against the procedural *conduct* of the election. We cannot assume that on both occasions the identical procedure was utilized by the union. We cannot assume that the irregularity to which the member addressed his complaint about the run-off was present in the initial balloting. Nor can we assume that the member intended to complain about the whole election when he only notified the union that he was dissatisfied with the conduct of the run-off election. Thus the first ground advanced by the Secretary is untenable.

The second and third contentions proffered by the plaintiff are designed to elicit from this Court a favorable construction of § 482(a) in light of the permissive language contained in § 411(a)(4) of the statute. Section 411(a) [fol. 9] (4) states that a member "may" be required to exhaust internal remedies before seeking enforcement of his rights in an administrative or legal proceeding. It is not wholly insignificant that earlier drafts of this "Bill of Rights" contained the word "shall" instead of "may". Cf. Legislative History of Labor-Management Reporting and Disclosure Act, P. 698, H.R. 8342, as reported.[2] In other words, the Secretary would have us read the permissive spirit of § 411, which is the heart of the Act, into § 482, upon which this action is predicated.

As is often the case when a court is confronted with a new statute, our attention is directed to the situation

[2] The next version of the bill, H.R. 8400, substituted "may" for "shall". There is no explanation, however, for the change.

which provoked the LMRDA and the deliberations of the legislative body which enacted the bill. This Act was the result of agitation for legal control over union leadership in order to preserve democracy within unions and to guarantee every union member the right to make his voice heard in the formulation of union policy. One of the most articulate pleas for such legislation was that of then Professor Archibald Cox. In his article "The Role of Law in Preserving Union Democracy", 72 HARVARD LAW REVIEW 609, he specifically rejected one form of proposed legislation, then pending, which gave the government wide powers to regulate the internal affairs of unions:

> The fundamental objection is that it would have turned over to an arm of the federal government the responsibility of carrying on the internal governmental processes of a labor union without any showing that the union officers and members were incompetent and corrupt. Such a measure does not promote freedom or democracy. It reduces self-government. It [fol. 10] denies the private responsibility and self-determination which lie at the heart of a voluntary association. 72 *Harv. L. Rev.* 609, 630.

Commenting upon the problem which the instant case presents, Professor Cox stated:

> Any member who can show that he has pursued in timely fashion the remedies available to him, within the union and any parent body, should be allowed to file a complaint with the Secretary of Labor alleging that a union election violated the statute. Requiring the exhaustion of internal remedies would preserve a maximum amount of independence and self-government by giving every international union the opportunity to correct improper local elections . . . . *Ibid.*, at 633.

Thus the commentator who urged most strongly the passage of the LMRDA viewed the exhaustion of internal remedies as an integral part of that bill.[3]

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[3] For a contrary view concerning internal remedies, see Montemuro, "The Doctrine of Exhaustion of Union Remedies", 2 Duke

Investigation of the deliberations of Congress further illuminates the viability of the exhaustion doctrine. At no point did the legislators indicate a willingness to abrogate this traditional requirement in favor of summary action by the federal government; on the contrary, we are confronted at every turn with positive, unequivocal expressions of faith in the ability of unions to regulate their own affairs.

> In filing a complaint the member *must* show that he has pursued any remedies available to him within the union and any parent body in a timely manner. This rule preserves a maximum amount of independence and self-government by giving every international union the opportunity to correct improper local elections. *If* the member is denied relief by the union or [fol. 11], can obtain no decision from the union any way or another within three months, he may complain to the Secretary. S. Rep. No. 187 on S.B. 1555, p. 21; Legislative History of LMRDA, vol. I, p. 417 (emphasis added).

At least the Committee which drew up the report on the bill seemed to think that exhaustion was a condition precedent to action by the Secretary.

At another point in the report, the Committee again expressed its reticence to shackle labor relations with further encumbering interference by the government.

> The provisions of the bill are not to be interpreted as taking the place of, or excusing non-compliance with established standards of proper conduct or any voluntarily adopted labor or management ethical practices code. Nor are they to be interpreted as precluding further voluntary action . . . The committee is convinced that rigid Government controls should be avoided if it is at all possible to do so. It is also convinced that labor and management have considerable ability to regulate their own affairs through their

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B. J. 148 (1952). The author's principal objection, however, is directed against dilatory tactics by the union after it has disciplined a member; that is not our problem.

own voluntary action. S. Rep., supra, p. 23; Legislative History, supra, p. 419.

Thus we are forced to agree with the statement of Judge Wilson in *McGraw* v. *United Association of Journeymen and Pipefitting Industry*, 216 F. Supp. 655,660 (E.D. Tenn., S.D. 1963), that the exhaustion of remedies requirement is based upon a Congressionally approved policy of affording unions the opportunity of correcting their own errors and encouraging union responsibility, initiative and self-discipline. In other words, a complaining member must first seek redress from his peers before inviting the government to champion his cause.[4]

[fol. 12] With this background, we address the other two objections of the plaintiff. The second objection, i.e., that the public interest demands correction of abuses uncovered in the June 8 election, is closely related to the first contention. The secretary seems to say that once he has the right to investigate and correct by suit any aspect of any union election, this grants him *carte blanche* authority to reach all aspects of a union's election procedures. But in this, he fails to distinguish between his right to investigate under the Act and his standing to sue under the Act.

The Secretary is granted broad *investigatory* powers, under 29 U.S.C.A. § 521;[5] to delve into union election

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[4] The court has searched unsuccessfully for any authoritative source in which the exhaustion doctrine has been disparaged or in which it is suggested that courts may disregard it. Cf. Symposium on the Labor-Management Reporting and Disclosure Act 138, 259, 284, 333-336, 505.

[5] § 521. Investigations by Secretary; applicability of other laws

(a) The Secretary shall have power when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this chapter (except subchapter II of this chapter) to make an investigation and in connection therewith he may enter such places and inspect such records and accounts and question such persons as he may deem necessary to enable him to determine the facts relative thereto. The Secretary may report to interested persons or officials concerning the facts required to be shown in any report required by this chapter and concerning the reasons for failure or refusal to file such a report or any other matter which he deems to be appropriate as a result of such an investigation.

[Footnote continued on page 11]

procedure; there is no requirement that the investigation be preceded by a request from a dissatisfied member. In advancing his second objection to the defendant's motion [fol. 13] to dismiss, the plaintiff would have us read the permissive scope of inquiry in § 521 into 482 because the public policy which prompted the inclusion of § 521 in the Act would best be served in this manner. He seeks, in effect, legislation by judicial edict.

To support this contention, the plaintiff cites *Wirtz* v. *Local 191, International Brotherhood of Teamsters, etc.*, 218 F. Supp. 885 (D.C. Conn. 1963), where the Secretary moved to enforce a subpoena duces tecum which had been served on a union pursuant to an investigation under § 521. The union resisted the subpoena on the ground that, since action by the Secretary to secure judicial remedy against an election is conditioned upon complaint by a member who has exhausted internal remedies, and no such showing had been made, the Government should be denied access to union records which might have importance in a subsequent suit. As the Court phrased the question:

> . . . must it be shown that the conditions precedent to the filing of a complaint by the Secretary have been fulfilled in order to permit an investigation by the Secretary and his use of the subpoena power to implement that investigation? 218 F. Supp. 885,886.

In overruling the union's objection, the Court recognized the basic differences between the two provisions: § 482 permits *challenge* of an election by resort to court, while § 521 permits *investigation* of an election. The right to investigate is unfetered by the restrictions surrounding the right to sue.[6]

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[5] [Continued]

(b) For the purpose of any investigation provided for in this chapter, the provisions of sections 49 and 50 of Title 15 (relating to the attendance of witnesses and the production of books, papers, and documents), are made applicable to the jurisdiction, powers, and duties of the Secretary or any officers designated by him.

[6] The plaintiff relies upon this statement by the Court to support his argument that the interest of the public requires us to ignore the plain wording of the statute:

[Footnote continued on page 12]

[fol. 14] On appeal the Second Circuit Court clearly analyzed the two sections in affirming the decision of the lower court. In dismissing the attempt by the union to read the restrictions of § 482 *into* § 521, the Court had no difficulty in reconciling the two sections because they are directed to two different objectives.

> No conflict is created by reading Section 402 and Section 601 together. Section 402 provides for the Secretary's instituting an action in the courts in behalf of an individual who has complained of a violation of Title IV. Section 601 provides that the Secretary shall "determine the facts relative" to a violation or threatened violation and that he may report the results of his investigation "to interested persons or officials." It may be that some or all of the limitations of Section 402, such as the exhaustion of internal remedies, are relevant to the suit which that section authorizes; there is in Section 601 no similar limitation on the Secretary's power to investigate and report. Presumably the Secretary can bring an action only when a complaint has been filed by an individual member (Section 402). But he can investigate and report without such a complaint. The two sections of the statute can thus be read together and each be given full effect in complete harmony and without any trace of clashing purposes. 321 F. 2d 445,448.

This case, rather than support the plaintiff's position on this issue, proves fatal to his argument; in that case, we

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[6] [Continued]

> But there is far more at stake in protecting democratic election procedures for all members . . . There is nothing ambiguous about the legislative policy in the Labor-Management Reporting and Disclosure Act to advance union democracy . . . Likewise it is clear from legislative history that Congress recognized that since the public interest in safeguarding and improving the electoral process exceeds even that of members, it might be unwise to place too much reliance on its members to vindicate that interest.

Not only is this statement totally unsupported by any reference to the legislative history upon which it purports to be founded, but it is pure dictum and of no avail to the plaintiff in this case.

find a union espousing a position which is the counterpart of the Secretary's position in the instant case. Just as the Connecticut District Court and the Second Circuit Court refused to grant the union's request to read restric-[fol. 15] tions into § 521, we refuse to read those same restrictions out of § 482.

In his solicitous pursuit of the public interest, the Secretary cites *Goldberg* v. *Amalgamated Local Union* 355, 202 F. Supp. 844 (E.D. N.Y. 1962) to further the argument that the public interest permits him to allege violations of the Act not contained in the member's internal protest. But that Court explicitly stated that

> [o]nly after the member of the labor organization has exhausted the remedies available to him under the Constitution and by-laws of the labor organization . . . does the right of the Secretary accrue. 202 F. Supp. 844,846.

Plaintiff here invokes the doctrine of "public interest." Can we place this "public interest" of which the government is here so solicitous above the interest of the individual members of the union? Unions are voluntary associations, organized by workers to promote their common welfare. The sole reason for their existence is to advance the cause of the individual laborer by negotiating from a position of collective strength to secure favorable wages and working conditions. The individual members entrust this strength to the officers of the union, just as the members of this defendant union did by the election of June 8, 1963. It is highly significant that not one voice of protest has been heard from the membership against the conduct of that election. We do not think that the Secretary under the guise of "public interest" may be permitted to complain when the membership has not; to hold otherwise would, in fact, be inimical to true public interest because it would require legislation by judicial fiat. If the members are satisfied, then the government ought to be satisfied.

The third contention advanced by the plaintiff suggests that the Court may, in its discretion, ignore the requirement of internal exhaustion. We disagree. The cases

[fol. 16] where this has been done involved situations where the internal complaint was to be heard by those very people against whom complaint was to be made. Cf., eg., *Calagaz* v. *Calhoun*, 309 F.2d 248 (5th Cir. 1962). This is but a further expression of a basic tenet of American jurisprudence—the law will not require a useless act. It is significant that the cited case and other like it do not involve actions brought by the Secretary under § 482. The Court finds, therefore, that it is without discretion to erase the explicit condition which Congress wrote into the statute.

In addition to these affirmative attacks upon the doctrine of exhaustion of remedies, the plaintiff suggests that the defendant should be estopped from asserting the failure of this condition precedent. Since the union had been directed to investigate a complaint about the July 13 runoff, it is argued, it should then have investigated the election of June 8. We disagree, for the simple reason that no one asked for such an investigation. The purpose of retaining the exhaustion requirement in the LMRDA is to afford the union the first opportunity to police its own behavior; if no complaint is heard, however, no investigation is launched. The statute (29 U.S.C.A. § 472(a)(2)) permits courts, when suit is brought, to presume that an election is valid until the contrary be proven. Thus the burden of proof and the risk of persuasion must be borne by the party which attacks an election. By analogy the union itself should be entitled to make that same presumption; the union can presume that its procedure is correct and need not investigate unless and until a member complains. Thus we hold that the union was not required to [fol. 17] investigate the election of June 8, and the union is not estopped from asserting the failure of a condition precedent to the Secretary's complaint against that election.

/s/ James C. Connell
Chief Judge

July 13, 1964.

[fol. 18]

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil Action No. C 64-99

[File Endorsement Omitted]

W. WILLARD WIRTZ, Secretary of Labor,
United States Department of Labor, PLAINTIFF

vs.

LOCAL UNION NO. 125, INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABORERS' UNION OF AMERICA, DEFENDANT

ORDER—July 14, 1964

UPON CONSIDERATION,

IT IS ORDERED that

Defendant's motion to dismiss part of the complaint is granted.

/s/ James C. Connell
Chief Judge

July 14, 1964.

[fol. 19] MR:ad 8-18-64

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

No. C 64-99

[File Endorsement Omitted]

W. WILLARD WIRTZ, Secretary of Labor, PLAINTIFF

vs.

LOCAL UNION NO. 125, INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABORERS' UNION OF AMERICA, DEFENDANT

ANSWER—Filed August 19, 1964

The Court, by Order dated July 14, 1964, having sustained defendant's motion to dismiss that portion of the complaint which is directed to the election of June 8, 1963, and the plaintiff not having moved or pleaded thereafter with respect to the original complaint, the defendant now files its answer to those allegations not affected by the order of the Court.

FIRST DEFENSE

The complaint fails to state a claim against defendant upon which relief can be granted.

SECOND DEFENSE

Defendant admits the allegations contained in paragraphs III, IV and V; admits that on July 30, 1963 a protest was filed concerning the election held in the defendant Union on July 13, 1963 for the office of Business Representative, and that on December 2, 1963 the protest was denied, and alleges it is without knowledge or information [fol. 20] sufficient to form a belief as to the truth of the other allegations contained in paragraph VI of the com-

plaint; alleges further that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph VII of the complaint as to the belief shared by the plaintiff, and denies each and every other allegation contained in the said paragraph; and denies the allegations of paragraphs VIII and IX.

WHEREFORE, having fully answered defendant demands that the Court dismiss the complaint and award the defendant its costs herein sustained.

/s/ Mortimer Riemer
Attorney for Defendant
2217 The Illuminating
Building
Cleveland, Ohio 44113
781-8272

[Certificate of Service omitted in printing]

[fol. 21]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil Action No. C64-99

[File Endorsement Omitted]

W. WILLARD WIRTZ, Secretary of Labor,
United States Department of Labor, PLAINTIFF

v.

LOCAL UNION NO. 125, INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABORERS' UNION OF AMERICA, DEFENDANT

PLAINTIFF'S REQUEST FOR ADMISSIONS—
Filed October 13, 1964

Plaintiff hereby requests defendant, within ten (10) days after service of this request, to make the following admissions for the purpose of this action only, subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That the run-off election held by defendant on July 13, 1963 for the office of Business Representative was subject to the provisions of the Constitution of the International Hod Carriers', Building and Common Laborers' Union of America (hereinafter referred to as the International Constitution), and to the provisions of the Uniform Local Union Constitution of the International Hod Carriers', Building and Common Laborers' Union of America (hereinafter referred to as the Uniform Local Constitution).

2. (a) That Exhibit A annexed to this Request is a true copy of the following provisions of the International [fol. 22] Constitution: Article VIII, Subsections 2(a), 2(a-vi), 2(a-vii), 2(a-viii); Article XI, Section 1; Article XVI, Section 1; Article XVIII, Sections 3, 4, 8.

(b) That each of the aforesaid provisions was in effect at all times between May 1, 1963 and July 13, 1963.

3. (a) That Exhibit B annexed to this Request is a true copy of the following provisions of the Uniform Local Constitution: Article III, Subsections 1(e), 1(h), 2(b), 2(c), 2(e), and 3(i); Article IV, Section 1, and Subsection 3E; Article V, Sections 1 and 11; Article VI, Subsections 1(a), 1(f), 2(a), 2(b), 2(c), 2(d), 2(e), and 3(d); Article VIII, Sections 5 and 7; and Article XII, Section 8.

(b) That each of the aforesaid provisions was in effect at all times between May 1, 1963 and July 13, 1963.

4. That on July 13, 1963, defendant held a run-off election for the office of Business Representative among three candidates, Cecil Dial, Irwin Ferry, and Andrew E. Jackson.

5. That the said run-off election was held because defendant's general election, held on June 8, 1963, had resulted in a tie for the office of Business Representative, between Cecil Dial and Andrew E. Jackson.

6. That Cecil Dial, Irwin Ferry, and Andrew E. Jackson were nominated for the office of Business Representative at a nominations meeting held by defendant on May 1, 1963.

7. That the eligibility of Cecil Dial, Irwin Ferry and Andrew E. Jackson to be candidates and to hold office in defendant Local was determined by an Election Committee, elected at the nominations meeting of May 1, 1963, at a screening meeting held on May 10, 1963.

[fol. 23] 8. That the eligibility of Cecil Dial, Irwin Ferry and Andrew E. Jackson to be candidates and to hold office in defendant Local, under Articles III and V of the Uniform Local Constitution, was determined on the basis of the Reports of defendant's Secretary-Treasurer reflecting transmittal of monthly per capita tax payments to the International for individual members.

9. (a) That Exhibit C annexed to this Request is a true copy of a letter dated February 7, 1963, signed by Jos. V. Moreschi, General President, and Peter Fosco, General Secretary-Treasurer, of the International, and

addressed to all affiliated Local Unions, District Councils and members.

(b) That defendant Local received said letter, or a copy thereof, before its nominations meeting held on May 1, 1963.

10. That the Secretary-Treasurer of defendant Local, during calendar year 1962 and until July 1963, at times remitted per capita tax payments to the International in behalf of individual members who had not made timely payment of their dues.

11. (a) That the Reports of defendant's Secretary-Treasurer reflecting per capita tax payments made to the International in behalf of individual members of defendant Local were not, between May 1, 1963 and July 13, 1963, an accurate indication of whether such individual members were in good standing.

(b) That such Reports were not an accurate indication of whether such individuals had been in good standing for the preceding year.

(c) That such Reports were not an accurate indication of whether such individuals had been members in good standing of the International for the two preceding years.

[fol. 24] 12. That the Election Committee did not, at the screening meeting held on May 10, 1963, examine the ledger cards of those members who had been nominated in order to determine whether they were eligible to be candidates and to hold office in defendant Local.

13. That Cecil Dial holds Book No. 1511 in defendant Local.

14. That the ledger card maintained by defendant for Cecil Dial shows:

(a) That he was a member in good standing of defendant Local on July 13, 1963;

(b) That he was a member in good standing of defendant Local on June 8, 1963;

(c) That he was a member in good standing of defendant Local on May 1, 1963;

(d) That he was continuously a member in good standing of defendant Local during the year preceding May 1, 1963;

(e) That he was continuously a member in good standing of the International during the two years preceding May 1, 1963.

15. That Irwin Ferry holds Book No. 1273 in defendant Local.

16. That the ledger card maintained by defendant for Irwin Ferry shows:

(a) That he made no dues payments for the months of October, November, or December, 1961.

(b) That he paid his dues for September, 1961 on November 1, 1961.

[fol. 25] (c) That after November 1, 1961, he paid no dues until February 27, 1962.

(d) That on February 27, 1962, he made dues payments for two months, and these payments were credited to the months of January and February, 1962.

(e) That he did not pay any readmission fee to defendant Local at any of the times aforementioned, nor at any time between February 27, 1962 and July 13, 1963.

17. That Andrew E. Jackson holds Book No. 3219 in defendant Local.

18. That the ledger card maintained by defendant for Andrew E. Jackson shows:

(a) That he paid no dues for the month of May, 1962.

(b) That after April 16, 1962, he paid no dues until September 24, 1962.

(c) That on September 24, 1962, he paid dues for one month.

(d) That on October 3, 1962, he paid three months dues, which were credited as dues payments, through September, 1962.

(e) That he paid no readmission fee to defendant Local at any of the times aforementioned, nor at any time between October 3, 1962 and July 13, 1963.

19. That at the run-off election held by defendant on July 13, 1963, members listed as paid for the month of May, 1963 in the Secretary-Treasurer's Per Capita Report to the International were deemed to be in good standing and eligible to vote.

[fol. 26] 20. That the following members of defendant Local voted in the run-off election held on July 13, 1963:

Name	Book No.
(a) Robert Lee	1349
(b) William L. Harris	823
(c) Fred Porch	455
(d) James Pittman	1218
(e) Dennis Eley	32
(f) George L. Washington	1041
(g) Ivory Holden	1229
(h) Charles Lee Mackey	2953
(i) Nathaniel Evans	3356
(j) David C. Johnson	2387
(k) Jessie Kelch	305
(l) John Buie	3133
(m) Charles Dickens	272
(n) Roger Fort, Jr.	1034
(o) Warren Goodman	2502
(p) Nathaniel Cheatham	1832
(q) Brawlie Lawrence	2855
(r) Willie E. Baker	1285
(s) Theodore Curtis	2236
(t) John Richardson	2538
(u) Reverend John Hamilton	3014
(v) Antonio Ierici	971
(w) James White	1437
(x) J. S. Copeland	256
(y) Charles Neal, Jr.	3290
(z) Raymond Victor	2877

[fol. 27]

(aa) Mike Reese	3190
(ab) Paul Hilson	60
(ac) Ernest W. Jenkins	1384
(ad) Ben Hall, Sr.	3469
(ae) Samuel H. Collins	9220
(af) Kenneth P. Brown	2122
(ag) Lonzo McPeters	110
(ah) Edward Caldwell	3639
(ai) Elliot Ratliff	1929
(aj) Melvin Douglas	244
(ak) Leroy Cochrane	606

	Name	Book No.
(al)	Sam W. Tomlinson	653
(am)	Mark Miles, Jr.	917
(an)	Anthony LaVolpa	713
(ao)	Clarence Williams	779
(ap)	Louis Robert Moss	901
(aq)	Russell Sipes	3066
(ar)	Cleveland Clark	68
(as)	William Wilson	733
(at)	Charles J. Butcherine	422
(au)	Roosevelt Thomson, Jr.	2103
(av)	Thomas Hollinger	3476
(aw)	Daniel Harris	2899
(ax)	George W. Welch	2603
(ay)	Frank Hawkins	773
(az)	Frank Brindisi	1265
(ba)	Andrew E. Jackson	3219
(bb)	Anderson L. Collier	55
(bc)	James Moffett	1333

[fol. 28]

(bd)	John Eley	364
(be)	James Rivers	1094
(bf)	Willie Woodbridge	530
(bg)	George Jones	3127
(bh)	Charles Peques	1155

21. That the ledger card maintained by defendant for each of the employees named in Request 22 shows the following:

(a) Robert Lee: no payment of dues for the months of March or April, 1963; no payment of any readmission fee on or before July 13, 1963.

(b) William L. Harris: no payment of dues for the months of January, February or March, 1963; no payment of any readmission fee on or before July 13, 1963.

(c) Fred Porch: no payment of dues or readmission fee between October 15, 1962 and July 13, 1963.

(d) James Pittman: payment of readmission fee not completed until after July 13, 1963.

(e) Dennis Eley: payment of readmission fee not completed until after July 13, 1963.

(f) George L. Washington: no payment of dues for April or May, 1963; no payment of any readmission fee on or before July 13, 1963.

(g) Ivory Holden: no payment of dues for the months of November, 1962 through May, 1963; payment for readmission fee not completed until after July 13, 1963.

(h) Charlie Lee Mackey: payment of dues for May, 1963 not made until after July 13, 1963.

(i) Nathaniel Evans: payment of dues for May, 1963 not made until after July 13, 1963.

[fol. 29] (j) David C. Johnson: no payment of dues for any part of 1963 on or before July 13, 1963.

(k) Jessie Kelch: payment of readmission fee not completed until after July 13, 1963.

(l) John Buie: no payment of dues for the month of May, 1963; payment of one month's dues on June 3, 1963, should have been credited to March, 1963, and payment of one month's dues on July 1, 1963, should have been credited to April, 1963; no further payment made until after July 13, 1963.

(m) Charles Dickens: no payment of dues for the months of March or April, 1963; no readmission fee paid on or before July 13, 1963.

(n) Roger Fort, Jr.; no payment of dues for the months of March, April or May, 1963; no readmission fee paid on or before July 13, 1963.

(o) Warren Goodman: dues for May, 1963 not paid until after July 13, 1963.

(p) Nathaniel Cheatham: no dues entries at all.

(q) Brawlie Lawrence: no initiation fee or readmission fee paid before first entry on card, made March 13, 1963.

(r) Willie E. Baker: payment of readmission fee not completed until after July 13, 1963.

(s) Theodore Curtis: no payment of dues for the month of May, 1963; payment of one month's dues on July 1, 1963 should have been credited to April, 1963.

(t) John Richardson: no payment of dues for the month of July, 1962; subsequent payments credited to later months; payment of one month's dues on June 17,

1963 should accordingly have been credited to April, 1963; [fol. 30] no payment of dues for May, 1963 until after July 13, 1963; no readmission fee charged or paid when dues in arrears for more than 60 days.

(u) Reverend John Hamilton: payment of readmission fee not completed until after July 13, 1963.

(v) Antonio Ierici: no payment of dues for the month of May, 1963; no payment of any readmission fee on or before July 13, 1963.

(w) James White: payment of readmission fee not completed until after July 13, 1963.

(x) J. S. Copeland: no payment of dues for the month of May, 1963; no payment of any readmission fee on or before July 13, 1963.

(y) Charles Neal, Jr.: no payment of dues for the months of March or April, 1963; no payment of any readmission fee on or before July 13, 1963.

(z) Raymond Victor: payment of readmission fee not completed on or before July 13, 1963.

(aa) Mike Reese: no payment of dues for the months of January or March, 1963; no readmission fee paid on or before July 13, 1963.

(ab) Paul Hilson: no payment of dues made between March, 1962 and October, 1962, and no readmission fee paid; $10,00 payment made on January 2, 1963 credited as four months' payment instead of two months' payment.

(ac) Ernest W. Jenkins: payment of initiation fee not completed on or before July 13, 1963.

(ad) Ben Hall, Sr.: no payment of dues for month of May, 1963 until after July 13, 1963.

(ae) Samuel H. Collins: no payment of dues for the months of February or March, 1963; no readmission fee paid on or before July 13, 1963.

[fol. 31] (af) Kenneth P. Brown: no payment of dues for the months of November or December, 1962; no readmission fee paid on or before July 13, 1963.

(ag) Lonzo McPeters: dues for the month of May, 1963 not paid until after July 13, 1963.

(ah) Edward Caldwell: no dues paid from August, 1962 through May, 1963; no readmission fee paid on or before July 13, 1963.

(ai) Elliot Ratliff: no payment of dues for the months of February or March, 1963; no readmission fee paid on or before July 13, 1963.

(aj) Melvin Douglas: no payment of dues for the month of March, 1963; subsequent payments credited to later months; hence no payment of dues for the month of May, 1963 until after July 13, 1963.

(ak) Leroy Cochrane: payment of readmission fee not completed until after July 13, 1963.

(al) Sam W. Tomlinson: no dues payments from March, 1962 to February, 1963; no readmission fee paid on or before July 13, 1963.

(am) Mark Miles, Jr.: no payment of dues for the month of May, 1963 until after July 13, 1963.

(an) Anthony LaVolpa: no payment of dues for the month of May, 1963 until after July 13, 1963.

(ao) Clarence Williams: no payment of dues for the months of January or February, 1963 until after July 13, 1963.

(ap) Louis Robert Moss: no payment of dues for the month of May, 1963 until after July 13, 1963.

(aq) Russell Sipes: payment of readmission fee not completed on or before July 13, 1963.

[fol. 32] (ar) Cleveland Clark: no payment of dues for the months of November or December, 1962; no readmission fee paid on or before July 13, 1963.

(as) William Wilson: payment of readmission fee or initiation fee not completed on or before July 13, 1963.

(at) Charles J. Butcherine: no payment of dues for the month of May, 1963 until after July 13, 1963.

(au) Roosevelt Thomson, Jr.: no payment of dues for the month of May, 1963 until after July 13, 1963.

(av) Thomas Hollinger: no payment of dues for the months of September, October or November, 1962; no readmission fee paid on or before July 13, 1963.

(aw) Daniel Harris: no payment of dues for the months of October or November, 1962; no readmission fee paid on or before July 13, 1963.

(ax) George W. Welch: payment of readmission fee not completed until after July 13, 1963.

(ay) Frank Hawkins: payment of readmission fee not completed until after July 13, 1963.

(az) Frank Brindisi: readmission fee not paid until after July 13, 1963.

(ba) Andrew E. Jackson: payment of dues for the month of June, 1962 not made until September 24, 1962; no readmission fee paid on or before July 13, 1963.

(bb) Anderson L. Collier: no payment of dues for the months of July, August or November, 1962; no readmission fee paid on or before July 13, 1963.

(bc) James Moffett: no payment of dues for the months of April, May or June, 1962, nor for the months of February or March, 1962; no readmission fee paid on or before July 13, 1963.

(bd) John Eley: no payment of dues for the month of May, 1963; no readmission fee paid on or before July 13, 1963.

[fol. 33] (be) James Rivers: no payment of dues for the month of May, 1963; no readmission fee paid on or before July 13, 1963.

(bf) Willie Woodbridge: no payment of dues for the months of June through November, 1962; no readmission fee paid on or before July 13, 1963.

(bg) George Jones: payment of readmission fee not completed on or before July 13, 1963.

(bh) Charles Peques: no payment of dues for the months of April, May or June, 1962; no readmission fee paid on or before July 13, 1963.

22. (a) That 379 members of defendant Local voted in the run-off election held on July 13, 1963.

(b) That the run-off election for the office of Business Representative held by defendant on July 13, 1963 resulted in the following tally: 198 votes for Andrew E. Jackson, 179 votes for Cecil Dial, and 2 votes for Irwin Ferry.

23. That following the run-off election held on July 13, 1963, Andrew E. Jackson was sworn in as the Business Representative of defendant Local.

24. That by letter dated August 11, 1963, Cecil Dial filed a protest and appeal with the General Executive

Board of the International concerning the run-off election held by defendant Local on July 13, 1963.

25. (a) That by letter dated August 16, 1963, the General President of the International acknowledged receipt of the protest and appeal filed with the General Executive Board by Cecil Dial.

(b) That a copy of the said letter of acknowledgment was sent to defendant Local.

(c) That Exhibit D annexed to this Request is a true copy of the said letter of acknowledgment.

[fol. 34] 26. (a) That by letter dated October 1, 1963, from Peter Fosco, General Secretary-Treasurer of the International, Cecil Dial was advised that hearing on his appeal would be held by a Hearings Panel of the General Executive Board on October 24, 1963.

(b) That Exhibit E annexed to this Request is a true copy of the above-described letter.

27. (a) That by letter dated December 2, 1963, from Peter Fosco, General Secretary-Treasurer of the International Cecil Dial was advised that his appeal had been denied by the General Executive Board.

(b) That Exhibit F annexed to this Request is a true copy of the above-described letter.

Dated: October 13, 1964.

/s/ John W. Douglas
Assistant Attorney General

/s/ Merle M. McCurdy
United States Attorney

/s/ Harland F. Leathers
Attorney, Department of Justice

Attorneys for Plaintiff

CHARLES DONAHUE
Solicitor

JAMES R. BEAIRD
Associate Solicitor

AARON A. CAGHAN
Regional Attorney

U. S. Department of Labor
Of Counsel

[Proof of service omitted in printing]

[fol. 35]

EXHIBIT A TO PLAINTIFF'S REQUEST, ETC.

Constitution of the International
Hod Carriers', Building and Common
Laborers' Union of America

ARTICLE VIII

General Executive Board

* * * *

Section 2. POWERS:

(a) Subject to review by the Convention, it shall have authority and control, over all of the executive and judicial powers of the International Union.

* * * *

(a-vi) In interim periods between regular conventions of the International Union, all judicial authority shall reside in the General Executive Board of the International Union; in pursuance of such authority it may impose such judgment or take such action as it deems warranted or appropriate over any circumstance concerning which such action is taken.

* * * *

(a-vii) Delegation of Judicial Powers: The judicial power of the General Executive Board may be delegated to one or more of its members, with authority to hold hearings on appeals, protests, petitions or charges properly filed with the General Executive Board; when so delegated, such member or members of the General Executive Board shall be known as a Hearings Panel. Said Hearings Panel shall, after due notice, hold hearings and from the evidence adduced, make such Findings of Fact and Recommendations as in their judgment they deem proper, which Findings of Fact and Recommendations must then be reported and submitted to the General Executive Board as a whole, for determination and decision.

[fol. 36] (a-viii) Any member or Subordinate Body aggrieved by a decision, direction, ruling or order of the

General Executive Board, shall have the right to appeal therefrom to the Convention of the International Union, provided, within thirty days from the date of notice of said decision, direction, ruling or order, from the General Secretary-Treasurer, the aggrieved member or Subordinate Body shall file an appeal in writing with the International Union, addressed to the General Secretary-Treasurer at Headquarters.

A decision, direction, ruling or order by the General Executive Board on any matter, is final and binding until and unless it is reversed or modified by the following regular Convention.

ARTICLE XI

General Secretary-Treasurer

Section 1. The General Secretary-Treasurer shall receive all monies due and owing to the International Union, including per capita tax, initiation fees, readmission fees and all other lawful fees and assessments payable by affiliated Local Unions and other Subordinate Bodies. He shall give proper receipt for such monies collected.

* * * *

ARTICLE XVI

Membership

Section 1. The qualifications, rights and obligations of members shall be as specifically provided for in Article III, Sections 1, 2 and 3, Article VIII, Section 5 and Article VIII, Section 8 of the Uniform Local Union Constitution.

* * * *

[fol. 37]

ARTICLE XVIII

Obligations of Affiliates

Section 3. Each Local Union shall, through its Secretary-Treasurer, pay to the International Union a per capita tax of $1.00 per member per month, payable for the current month on each member in the Local Union

and an initiation fee of $5.00 for each member registered with the International Union as a member and $2.50 for each member readmitted; each initiation fee and each readmission fee must be accompanied with the per capita tax for the month in which the member is registered or readmitted.

Section 4. If a Local Union fails, neglects or refuses to pay to the International Union the per capita tax, initiation fees, readmission fees or other lawful payments within the time prescribed, it shall thereby be automatically suspended.

* * * *

Section 8. (a) Local Unions shall charge not less than five dollars nor directly or indirectly more than seventy-five dollars as an initiation fee.

(b) Local Unions shall charge, as readmission fee, amounts as provided for in Article VIII, Section 8 of the Uniform Local Union Constitution.

(c) Local Unions shall fix and regulate the dues payable by its members in such amount as is lawful and necessary to carry out its objects, purposes and obligations; such amount shall not be less than three dollars per month. In areas where District Councils exists, said dues shall be fixed and regulated as provided for in Article II, Sections 2(c) and 3 of the Uniform District Council Constitution.

* * * *

[fol. 38]

EXHIBIT B TO PLAINTIFF'S REQUEST, ETC.

Uniform Local Union Constitution
of the International Hod Carriers',
Building and Common Laborers'
Union of America

ARTICLE III

Membership

Section 1. APPLICANTS

* * * *

(e) Such applicant must tender to the Local Union in which he is seeking membership, the initiation fee, dues and other lawful fees and assessments that prevail in said Local Union.

* * * *

(h) No person shall be clothed with or acquire or retain the right of membership unless payment of his initiation fee, readmission fee and per capita tax is received by the International Union when due.

Section 2. RIGHTS OF MEMBERS: In accordance with and subject to all of the provisions of the International Union Constitution and this Constitution, all persons having lawfully acquired membership in the Union, shall be entitled to the following rights:

* * * *

(b) To attend and participate in meetings and functions of the Local Union;

(c) To be a candidate for and hold office or position in the Local Union;

* * * *

(e) To readmission;

* * * *

[fol. 39] Section 3. OBLIGATIONS OF MEMBERS:

* * * *

(i) Each member shall pay to his Local Union such initiation fee, dues, and other lawful fees and assessments as are fixed and established pursuant to constitutional authority.

ARTICLE IV

Officers

Section 1. The officers of the Local Union shall consist of President, Vice-President, Recording Secretary, Secretary-Treasurer, Business Representative, Sergeant-at-Arms, three Auditors and additional members of the Executive Board.

* * * *

Section 3. DUTIES OF OFFICERS:

* * * *

E—BUSINESS REPRESENTATIVE

(a) The Business Representative shall be the recognized representative of the Local Union.

(b) Specifically, but not in limitation thereof:

1. Unless otherwise provided, negotiations with employers shall be through a Negotiating Commitee of the Local Union, of which the Business Representative shall be chairman ex-officio.

2. It shall be the duty of the Business Representative to see to it that the provisions of all agreements are enforced and respected by all persons affected thereby. All instances of non-compliance which are not amicably adjusted by him, shall be reported to the Executive Board of the Local Union.

3. He shall have the power to appoint and supervise Stewards.

4. As Business Representative, he shall be in charge of, direct and supervise the activities of Assistant Business [fol. 40] Representatives, when, because of need of additional men in the field, the Local Union has either appointed or elected them.

5. He shall keep himself informed of all contemplated work to be done within the jurisdiction of the Local Union

and make such pre-job arrangements as may be necessary in order to insure the proper and lawful progress of such work once started and to its conclusion.

6. He shall visit all projects within the jurisdiction of the Local Union in order to ascertain whether or not work is progressing, in accordance with established conditions.

7. He shall be charged with the responsibility of protecting the craft jurisdiction within the territory entrusted to the Local Union by the International Union.

8. He shall use all proper and lawful means of organizing the work coming within the territorial and craft jurisdiction of the Local Union.

9. He shall make a report on his activities and the activities of his assistants, if any, at each meeting of the Local Union and at such other times as the Executive Board of the Local Union may require.

(c) For all monies collected by him in the field, he shall give an official receipt furnished by the International Union, which monies he shall then turn over to the Secretary-Treasurer of the Local Union, as soon as is practicable, and obtain a receipt therefor.

(d) He and his Assistants, if any, shall furnish bond in such sum as the Executive Board of the Local Union shall determine, to indemnify the Local Union against possible financial loss to the Local Union. The premium for such bond shall be paid by the Local Union.

* * * *

[fol. 41]

ARTICLE V

Qualifications for Office

In order to qualify as a candidate for any office in a Local Union, a member:

1. Shall be required to have been in continuous good standing in the International Union for a period of two years and in continuous good standing in the Local Union for a period of one year; these requirements shall not apply in cases when Local Unions have been chartered for a period of less than one year prior to the date of nomination.

* * * *

11. All of the qualifications for office must be present at the time of nomination, as well as at the time of election and during the term of office.

ARTICLE VI

Nomination and Election of Officers

Section 1. NOMINATIONS:

(a) A special meeting, to be known as the "Nomination Meeting," shall be held not less than ten days nor more than twenty days prior to a regular meeting of the Local Union to be held in the month of May of the election year, at which Judges of Election shall be either appointed or elected, by vote of the membership present at such meeting, and at which nominations shall be made for all of the offices or positions to be filled.

* * * *

(f) (i) A member in good standing may be nominated for office in the Local Union.

(ii) Such member shall meet all of the requirements of qualification hereinabove outlined.

[fol. 42] (iii) All members nominated shall be present at the time of nomination, unless absent from the meeting on business for the Local Union, for the District Council, or for the International Union, or excused by a vote of the membership of the Local Union.

* * * *

Section 2. When the nominations have been completed:

(a) The Chairman shall state that the Constitution requires all candidates to appear before the Judges of Election, who shall examine them in order to determine whether or not each candidate possesses all of the qualifications hereinabove provided.

(b) The Judges of Election shall then announce the time and place when such examinations will be made.

(c) Candidates are required to appear at such time and place and be examined.

(d) Any member in good standing wishing to protest the qualification of any candidate or who may have information or data regarding the qualification of a candidate, may also appear before the Judges of Election at the time and place specified.

(e) After the Judges of Election have completed their examination, they shall pass upon and decide whether or not each candidate qualifies, as provided, and prepare their report, which is to be submitted to the regular meeting of the membership in the month of May following the Nomination Meeting.

* * * *

Section 3. ELECTION.

* * * *

[fol. 43] (d) As each member in good standing appears for the purpose of voting, he shall report to the Secretary-Treasurer and identify himself. The Secretary-Treasurer, together with a Judge of Election, shall then determine whether such person is a member in good standing of the Local Union and entitled to vote. As each member is qualified, he shall be required to sign his name and book number on a Membership Voting Register, which Register, when the voting has been concluded, shall then be signed, at the end thereof, by the Secretary-Treasurer and the three Judges of Election.

* * * *

ARTICLE VIII

Initiation Fees, Readmission Fees, Dues and Assessments

* * * *

Section 4. In all instances, the initiation fee shall be not less than five dollars nor more than seventy-five dollars and the dues shall be not less than three dollars per month and the readmission fee shall be in accordance with the provision dealing with readmission fees, as herein provided.

Section 5. The monthly dues are due on the first day of the month and unless paid on or before the last day of the following month, the member shall be considered to be in arrears and suspended without notice.

Section 6. A member who has been in continuous good standing for a period of twenty-five years or more and who has reached the age of sixty-two years and who desires to retire and cease working, shall be entitled to pay a minimum dues of $1.50 per month and thereby continue to maintain his good standing.

[fol. 44] Section 7. The readmission fee for persons who are suspended for nonpayment of dues, assessments or fines to the Local Union and who remain suspended for a period of less than one year, shall be the amount of such assessments or fines in addition to the following: less than three months in arrears, the readmission fee shall be not less than five dollars, plus the current dues; more than three months and less than six months, the readmission fee shall be one-half of the initiation fee, plus the current dues; more than six months and less than nine months, the readmission fee shall be two-thirds of the initiation fee, plus the current dues; more than nine months and less than one year, the readmission fee shall be three-fourths of the initiation fee, plus the current dues. In no case shall the readmission fee be greater than the initiation fee. Once the member has defaulted in the payment of dues, as herein provided, the date of suspension referred to in this Section, shall be the first day after the month for which the member's dues were last paid.

Section 8. Persons in arrears have no right to attend meetings nor any other rights except the right to be readmitted in accordance with the above section. If a member becomes suspended by reason of his own conduct he can only be readmitted through the Local Union of which he was a member when suspended. Readmitted members shall be considered new members from the date of the readmission.

* * * *

ARTICLE XII

Charges, Trials and Appeals

* * * *

[fol. 45] Section 8. The matter of conduct of nomination or election of Local Union officers, officials and delegates is not within the Jurisdiction of the Local Union Trial Board.

Any person aggrieved with the nomination process must appeal directly to the General Executive Board prior to the holding of the election. Any person aggrieved with the conduct of election must protest directly to the General Executive Board within thirty days after the election. All such protests must clearly and specifically set forth the grounds upon which the appellant shall rely.

* * * * *

[fol. 46]

EXHIBIT C TO PLAINTIFF'S REQUEST, ETC.

[Letterhead of International Hod Carriers' Building and Common Laborers' Union of America omitted in printing]

February 7, 1963

(Release # 1—1963)

TO ALL AFFILIATED LOCAL UNIONS,
DISTRICT COUNCILS AND MEMBERS

Greetings:

The General Executive Board, at a recent meeting, was made aware of several complaints and protests regarding payments of constitutional fees, such as dues, initiation fees, readmission fees, et al.

At the outset, it is to be observed that corresponding payments made by Local Unions to the General Secretary-Treasurer of the International Union, such as per capita tax, etc., are received and accepted on the presumption of propriety; namely, that the payments submitted are pursuant to and in accordance with the full intent of constitutional requirements. To illustrate: when the Secretary-Treasurer of a Local Union forwards per capita tax in behalf of a member, the presumption is that the Secretary-Treasurer has received payment of the dues for the particular month, directly from the member. It now appears that, in some instances, Secretaries-Treasurers of Local Unions forward per capita tax to the International Union for certain members who have not paid dues for the corresponding month.

The information further discloses that, in some instances, there has been a practice of so-called "free dues". This has occurred and has been applied to various officers of Local Unions, stewards on jobs, sick members, and for individuals in other categories or capacities.

It must be noted that such offer of per capita tax is definitely improper because it is not based on a payment made

directly by the member to the Local Union and, accordingly, any submission of per capita tax by the Secretary-Treasurer is therefore void, invalid and of no effect. You will also notice that, this being so, the member is not in good standing under the provisions of the Constitution.

In order that this entire area of mistaken and improper activity may be corrected, the General Executive Board, at its meeting held January 9-29, 1963, voted, that in all instances where and when the General Secretary-Treas- [fol. 47] urer, on and after April 1, 1963, finds that per capita tax and other fees submitted by Local Unions, are not based upon corresponding payments directly made by the member to the Local Union, such submission shall be deemed to be invalid, improper and of no effect.

It must be noted, as stated above, that where and when such finding occurs, the result is, that the members affected are not in good standing if the delinquency is for a period longer than that specified and provided for in the Constitution.

Any individual or member rendering service to, or for the Union, may be compensated for such service and if such individual or member then wishes to apply such payment toward dues or other fee, he may do so; the record of the Local Union must, however, indicate that payment was made to the individual or member for services rendered and the record must then also indicate that the individual or member then made payment of the required constitutional dues or fees.

All affiliates and members please take note and abide yourselves accordingly.

Respectfully and fraternally yours,

/s/ Jos. V. Moreschi
JOS. V. MORESCHI
General President

/s/ Peter Fosco
PETER FOSCO
General Secretary-Treasurer

NOTE: Members whose dues have been checked off by the employer, pursuant to a collective bargaining agreement, shall be deemed to have made payment of dues on the date when same were checked off. Delinquency or tardiness by the employer of payment of dues and other proper fees to the Local Union, shall not be considered delinquency on the part of the member affected.

[fol. 48]

EXHIBIT D TO PLAINTIFF'S REQUEST, ETC.

[Letterhead of International Hod Carriers' Building and Common Laborers' Union of America omitted in printing]

August 16, 1963

Mr. Cecil Dial
631 Ridge Avenue
Youngstown, Ohio

Re: Protest and Appeal to the General Executive Board

Dear Sir and Brother:

This will acknowledge receipt of your communication, dated August 11, 1963, in re. the above.

The same has been placed in the file of your appeal.

Fraternally yours,

/s/ Jos. V. Moreschi
JOS. V. MORESCHI
General President

cc: Local Union 125
cc: Columbus, Ohio regional office

[fol. 49]

EXHIBIT E TO PLAINTIFF'S REQUEST, ETC.

[Letterhead of International Hod Carriers' Building and Common Laborers' Union of America omitted in printing]

October 1, 1963

Mr. Cecil Dial
631 Ridge Avenue
Youngstown, Ohio

Dear Sir and Brother:

In the matter of your appeal, dated July 30, 1963, you are officially advised that a hearing on said appeal will be held by a Hearing Panel of the General Executive Board, on October 24, 1963, at the Morrison Hotel, Chicago, Illinois, at 10:00 A.M., or as soon thereafter as the case may be heard.

You may be present at the said time and place if you so desire at your own expense. In the event that no personal appearance will be made, I wish to advise that any document, paper or brief may be submitted for consideration, by promptly forwarding same to this office.

After the hearings have been concluded, the Hearings Panel will prepare Findings of Fact and Recommendations for submission to the General Executive Board as a whole, after which the said Board will make its final decision. When a decision has been made, the General Secretary-Treasurer will advise all concerned by mailing a notice thereof.

Fraternally yours,

/s/ Peter Fosco
PETER FOSCO
General Secretary-Treasurer

cc: Columbus, Ohio, regional office

[fol. 50]

EXHIBIT F TO PLAINTIFF'S REQUEST

[Letterhead of International Hod Carriers' Building and Common Laborers' Union of America omitted in printing]

December 2, 1963

Mr. Cecil Dial
631 Ridge Avenue
Youngstown, Ohio

Dear Sir and Brother:

This is to officially notify you of the following action of the General Executive Board, taken at its meeting held at the Americana Hotel, New York, New York, October 28-November 22, 1963:

"Appeal of Cecil Dial, Local Union 125,
Youngstown, Ohio

"The following is the report of the Hearings Panel in this matter:

'By communication dated July 30, 1963, the appellant protests the election held in the Local Union on July 13, 1963, for the office of Business Representative.

'The appellant entered an appearance. The Local Union was represented.

'After considering the documents and evidence in the file of this case, the Panel

FINDS: 1. That after proper notices and nomination, an election was held in the Local Union on June 8, 1963.

2. That in this election, appellant was one of three candidates listed on the ballot for the office of Business Representative and that the appellant and one of the other two candidates each received 135 votes.

3. That because of the aforementioned tie vote, the membership was sent a 15-day notice that a new election for the office of Business Representative would be held on July 13, 1963.

[fol. 51]

4. That in the election on July 13, 1963, the appellant was the defeated runner-up by a margin of nineteen (19) votes.
5. That appellant's allegation that nine (9) ineligible members voted could not affect the outcome of the election.

'Accordingly, therefore, the Panel

RECOMMENDS: That the appeal be denied.'

"After due deliberation, it is.

VOTED: That the report of the Panel be approved and that the Findings and Recommendation be and the same hereby are adopted."

Fraternally yours,

/s/ Peter Fosco
PETER FOSCO
General Secretary-Treasurer

cc: Columbus, Ohio, regional office

[fol. 52] MR:ad 11-64

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil Action No. C 64-99

[File Endorsement Omitted]

W. WILLARD WIRTZ, Secretary of Labor, PLAINTIFF

-vs-

LOCAL UNION NO. 125, INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABORERS' UNION OF AMERICA, DEFENDANT

ANSWERS TO INTERROGATORIES—Filed November 23, 1964

Comes now defendant Union by Martin, Mason, its Secretary-Treasurer, and submits the following answers to interrogatories served upon it by plaintiff:

Q. 1 Please state the name of the person (or persons) answering these interrogatories, the position he (or they) hold with defendant Local, and the length of time he (or they) has held such position.

A. 1 Martin Mason, Secretary-Treasurer. Ten years.

Q. 2 Did the Election Committee chosen at defendant's nominations meeting of May 1, 1963, before the election of June 8, 1963, examine the qualifications of Cecil Dial, Irwin Ferry, and Andrew E. Jackson in order to deter-
[fol. 53] mine whether they were eligible to be candidates for and to hold the office of Business Representative of defendant Local?

A. 2 Yes.

Q. 3 If the answer to (2) is in the affirmative, at what time and place, and in what manner, did the Election Committee determine the eligibility of the three above-named candidates to run for and to hold the office of Business Representative of defendant Local?

A. 3 May 1, 1963 at the Union Hall, 29 5th Avenue, Youngstown, Ohio. The Election Committee checked the membership book of each candidate. On May 10, 1963 the Election Committee screened each candidate by another check of the membership book, the per capita tax sheet, and by an examination into the qualifications of candidates under Article V of the uniform local constitution.

Q. 4 If the answer to (2) is in the negative, then by whom, at what time and place, and in what manner, was the eligibility of the three named candidates determined?

A. 4 See (2) and (3) above.

Q. 5 Was a determination made, following the election [fol. 54] of July 13, 1963, concerning the eligibility of Cecil Dial, Irwin Ferry, and Andrew E. Jackson to be candidates for and to hold the office of Business Representative of defendant Local?

A. 5 None. The determination was made on May 10, 1963.

Q. 6 If the answer to (5) is in the affirmative, by whom, at what time and place, and in what manner, was such determination made?

A. 6 See (3) and (5) above.

Q. 7 What was the total membership of defendant Local,

(a) on May 1, 1962? A. 967
(b) on May 1, 1963? A. 730
(c) on June 8, 1963? A. 717
(d) on July 13, 1963? A. 729

Q. 8 How many members of defendant Local were automatically suspended for non-payment of dues, pursuant to Article VIII, Section 5, of the Uniform Local Constitution,

(a) Between May 1, 1962 and January 1, 1963? A. 357
(b) Between January 1, 1963 and May 1, 1963? A. 229
(c) Between May 1, 1963 and June 8, 1963? A. 22
(d) Between June 8, 1963 and July 13, 1963? A. 73

[fol. 55] Q. 9 How many members of defendant Local, having been suspended for non-payment of dues, completed payment of their readmission fees,

(a) Between May 1, 1962 and January 1, 1963? A. 21

(b) Between January 1, 1963 and May 1, 1963? A. 22

(c) Between May 1, 1963 and June 8, 1963? A. 20

(d) Between June 8, 1963 and July 13, 1963? A. 10

Q. 10 Were notices of the run-off election held on July 13, 1963 mailed to all members of defendant Local, or only to members in good standing of defendant Local?

A. 10 Notices were sent to all members whose names appeared on the per capita tax sheet and were considered to be members in good standing of the Local Union.

Q. 11 If notices of the run-off election held on July 13, 1963 were sent only to members in good standing of defendant Local,

(a) What was the standard used to determine which members were in good standing?

(b) By whom, and in what manner, was it determined whether such standard had been met by individual members?

A. 11 (a) The per capita tax sheet.

(b) The Secretary-Treasurer of the Local Union.

[fol. 56] Q. 12 At the run-off election held by defendant on July 13, 1963, what identification was required of members seeking to vote?

A. 12 The individual's paid-up membership book and in some instances the quarterly card of the Building and Construction Trades Council of Youngstown, Ohio.

Q. 13 At the run-off election held by defendant on July 13, 1963, by whom and in what manner was the eligibility of members to vote determined?

A. 13 By the Judges of Election and Secretary-Treasurer.

Q. 14 How many members of defendant Local voted in the run-off election held on July 13, 1963?

A. 14 379.

Q. 15 Were any ballots cast in the run-off election of July 13, 1963 voided or invalidated?

A. 15 Yes.

Q. 16 If the answer to (15) is in the affirmative, how many such ballots were voided or invalidated, and for what reason or reasons?

A. 16 This question cannot be answered positively. There were eight (8) "disqualified" ballots and two (2) "challenged" ballots.

[fol. 57] Q. 17 Were any members of defendant Local who presented themselves at the run-off election held on July 13, 1963 refused a ballot upon the ground that they were ineligible to vote?

A. 17 None to my knowledge.

Q. 18 If the answer to (17) is in the affirmative, how many members were thus ruled ineligible to vote, and for what reason or reasons?

A. 18 See answer to (17).

Dated: November 23, 1964

[fol. 58]

[*Duly sworn to by Martin Mason jurat omitted in printing (all in italics)*]

[Certificate of Service omitted in printing]

[fol. 59]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil Action No. C 64-99

[File Endorsement Omitted]

W. WILLARD WIRTZ, Secretary of Labor, PLAINTIFF

-vs-

LOCAL UNION NO. 125, INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABORERS' UNION OF AMERICA, DEFENDANT

ANSWERS TO REQUEST FOR ADMISSIONS—
Filed November 23, 1964

Comes now defendant by Martin Mason, its Secretary-Treasurer, and makes the following admissions to the request for admissions for the purpose of this action only, and subject to all pertinent objections to admissability which may be interposed by counsel at trial:

1. That the run-off election held by defendant on July 13, 1963 for the office of Business Representative was subject to the provisions of the Constitution of the International Hod Carriers', Building and Common Laborers' Union of America (hereinafter referred to as the International Constitution), and to the provisions of the Uniform Local Union Constitution of the International Hod Carriers', Building and Common Laborers' Union of America (hereinafter referred to as the Uniform Local Constitution).

[fol. 60]

A. 1. There is no provision in the International Constitution or in the Uniform Local Constitution dealing with the subject of a run-off election. Therefore, I cannot truthfully admit or deny this request for an admission.

2. (a) That Exhibit A annexed to this Request is a true copy of the following provisions of the International Constitution: Article VIII, Subsections 2(a), 2(a-vi), 2(a-vii), 2(a-viii); Article XI, Section 1; Article XVI, Section 1; Article XVIII, Sections 3, 4 and 8.

(b) That each of the aforesaid provisions was in effect at all times between May 1, 1963 and July 13, 1963.

A. 2 (a) It is except that subsection 2(a-vi) omits the second paragraph of said subsection.

A. 2 (b) They were.

3. (a) That Exhibit B annexed to this Request is a true copy of the following provisions of the Uniform Local Constitution: Article III, Subsections 1(e), 1(h), 2(b), 2(c), 2(e), and 3(i); Article IV, Section 1, and Subsection 3E; Article V, Sections 1 and 11; Article VI, Subsections 1(a), 1(f), 2(a), 2(b), 2(c), 2(d), 2(e), and 3(d); Article VIII, Sections 5 and 7; and Article XII, Section 8.

(b) That each of the aforesaid provisions was in effect at all times between May 1, 1963 and July 13, 1963.

A. 3 (a) It is except that Article III, Subsection 2 is incorrect, and the Request for Admission refers to Article [fol. 61] VIII, Sections 5 and 7, but the Exhibit is a copy of Sections 4, 5, 6 and 7.

A. 3 (b) They were.

4. That on July 13, 1963, defendant held a run-off election for the office of Business Representative among three candidates, Cecil Dial, Irwin Ferry, and Andrew E. Jackson.

A. 4. Yes.

5. That the said run-off election was held because defendant's general election, held on June 8, 1963, had resulted in a tie for the office of Business Representative, between Cecil Dial and Andrew E. Jackson.

A. 5. Yes.

6. That Cecil Dial, Irwin Ferry, and Andrew E. Jackson were nominated for the office of Business Representative at a nominations meeting held by defendant on May 1, 1963.

A. 6. Yes.

7. That the eligibility of Cecil Dial, Irwin Ferry and Andrew E. Jackson to be candidates and to hold office in defendant Local was determined by an Election Committee, elected at the nominations meeting of May 1, 1963, at a screening meeting held on May 10, 1963.

A. 7. Eligibility was determined by the Judges of Election.

[fol. 62]

8. That the eligibility of Cecil Dial, Irwin Ferry and Andrew E. Jackson to be candidates and to hold office in defendant Local, under Articles III and V of the Uniform Local Constitution, was determined on the basis of the Reports of defendant's Secretary-Treasurer reflecting transmittal of monthly per capita tax payments to the International for individual members.

A. 8. It was determined in part on the basis of reports of the Union's Secretary-Treasurer.

9. (a) That Exhibit C annexed to this Request is a true copy of a letter dated February 7, 1963, signed by Jos. V. Moreschi, General President, and Peter Fosco, General Secretary-Treasurer, of the International, and addressed to all affiliated Local Unions, District Councils and members.

(b) That defendant Local received said letter, or a copy thereof, before its nominations meeting held on May 1, 1963.

A. 9 (a) It is.

A. 9 (b) It did.

10. That the Secretary-Treasurer of defendant Local, during calendar year 1962 and until July 1963, at times remitted per capita tax payments to the International in behalf of individual members who had not made timely payment of their dues.

A. 10. He did.

[fol. 63]

11. (a) That the Reports of defendant's Secretary-Treasurer reflecting per capita tax payments made to the International in behalf of individual members of defendant Local were not, between May 1, 1963 and July 13,

1963, an accurate indication of whether such individual members were in good standing.

(b) That such Reports were not an accurate indication of whether such individuals had been in good standing for the preceding year.

(c) That such Reports were not an accurate indication of whether such individuals had been members in good standing of the International for the two preceding years.

A. 11 (a) Yes.

11 (b) Yes.

11 (c) Yes.

12. That the Election Committee did not, at the screening meeting held on May 10, 1963, examine the ledger cards of those members who had been nominated in order to determine whether they were eligible to be candidates and to hold office in defendant Local.

A. 12. The Judges of Election checked the per capita tax sheet and the membership book of each candidate for office but did not examine ledger cards.

13. That Cecil Dial holds Book No. 1511 in defendant Local.

[fol. 64]

A. 13. Yes.

14. That the ledger card maintained by defendant for Cecil Dial shows:

(a) That he was a member in good standing of defendant Local on July 13, 1963; A. It does.

(b) That he was a member in good standing of defendant Local on June 8, 1963; A. It does.

(c) That he was a member in good standing of defendant Local on May 1, 1963; A. It does.

(d) That he was continuously a member in good standing of defendant Local during the year preceding May 1, 1963; A. It does

(e) That he was continuously a member in good standing of the International during the two years preceding May 1, 1963. A. It does.

15. That Irwin Ferry holds Book No. 1273 in defendant Local.

A. 15. Yes.

16. That the ledger card maintained by defendant for Irwin Ferry shows:

(a) That he made no dues payments for the months of October, November, or December, 1961. A. It does.

(b) That he paid his dues for September, 1961 on November 1, 1961. A. It does.

[fol. 65]

(c) That after November 1, 1961, he paid no dues until February 27, 1962. A. It does.

(d) That on February 27, 1962, he made dues payments for two months, and these payments were credited to the months of January and February, 1962. A. It does.

(e) That he did not pay any readmission fee to defendant Local at any of the times aforementioned, nor at any time between February 26, 1962 and July 13, 1963. A. It does.

17. That Andrew E. Jackson holds Book No. 3219 in defendant Local.

A. 17. Yes.

18. That the ledger card maintained by defendant for Andrew E. Jackson shows:

(a) That he paid no dues for the month of May, 1962. A. It does.

(b) That after April 16, 1962, he paid no dues until September 24, 1962. A. It does.

(c) That on September 24, 1962, he paid dues for one month. A. It does.

(d) That on October 3, 1962, he paid three months dues, which were credited as dues payments through September, 1962. A. It does.

(e) That he paid no readmission fee to defendant [fol. 66] Local at any of the times aforementioned, nor at any time between October 3, 1962 and July 13, 1963. A. It does.

19. That at the run-off election held by defendant on July 13, 1963, members listed as paid for the month of May, 1963 in the Secretary-Treasurer's Per Capita Report to the International were deemed to be in good standing and eligible to vote.

A. 19. Yes.

A. 20. The individuals named from (a) Robert Lee, Book 1349 to (bh) Charles Peques, Book 1155, voted in the run-off election held on July 13, 1963.

A. 21. The answer to the request for admission 21 (incorrectly stated as request 22) is "Yes", except in the following respects: (aq) Sipes—his payment was completed February 16, 1963; (ac) Jenkins—his payment was completed before July 13, 1963.

22. (a) That 379 members of defendant Local voted in the run-off election held on July 13, 1963. A. Yes.

(b) That the run-off election for the office of Business Representative held by defendant on July 13, 1963 resulted in the following tally: 198 votes for Andrew E. Jackson, 179 votes for Cecil Dial, and 2 votes for Irwin Ferry. A. Yes.

[fol. 67]

23. That following the run-off election held on July 13, 1963, Andrew E. Jackson was sworn in as the Business Representative of defendant Local.

A. 23. Yes.

24. That by letter dated August 11, 1963, Cecil Dial filed a protest and appeal with the General Executive Board of the International concerning the run-off election held by defendant Local on July 13, 1963.

A. 24. Yes.

25. (a) That by letter dated August 16, 1963, the General President of the International acknowledged receipt of the protest and appeal filed with the General Executive Board by Cecil Dial. A. Yes.

(b) That a copy of the said letter of acknowledgment was sent to defendant Local. A. Yes.

(c) That Exhibit D annexed to this Request is a true copy of the said letter of acknowledgment. A. It is.

26. (a) That by letter dated October 1, 1963, from Peter Fosco, General Secretary-Treasurer of the International, Cecil Dial was advised that a hearing on his appeal would be held by a Hearings Panel of the General Executive Board on October 24, 1963. A. He was.

(b) That Exhibit E annexed to this Request is a true copy of the above-described letter. A. It is.

[fol. 68]

27. (a) That by letter dated December 2, 1963, from Peter Fosco, General Secretary-Treasurer of the International Cecil Dial was advised that his appeal had been denied by the General Executive Board. A. He was.

(b) That Exhibit F annexed to this Request is a true copy of the above-described letter. A. It is.

Dated: November 23, 1964.

[fol. 69] MR:ad 11-16-64

[*Duly sworn to by Martin Mason jurat omitted in printing (all in italics)*]

[Certificate of Service omitted in printing]

[fol. 70]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil Action File No. C64-99

[File Endorsement Omitted]

W. WILLARD WIRTZ, Secretary of Labor, PLAINTIFF

v.

LOCAL UNION NO. 125, INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABORERS' UNION OF AMERICA, DEFENDANT

MOTION FOR SUMMARY JUDGMENT BY PLAINTIFF, OR, IN THE ALTERNATIVE, MOTION TO ADVANCE ON TRIAL DOCKET—Filed June 1, 1965

Plaintiff, upon the pleadings herein, plaintiff's interrogatories and request for admissions (including exhibits) and defendant's answers thereto, plaintiff's additional exhibits G through N annexed hereto, and the two memoranda submitted herewith, moves the Court as follows:

1. That the Court enter, pursuant to Rule 56 of the Federal Rules of Civil Procedure, summary judgment in plaintiff's favor for the relief demanded in the complaint, except insofar as said relief concerns that part of defendant's election held June 8, 1963, on the ground that there is no genuine issue as to any material fact and that plaintiff is entitled to judgment as a matter of law; or, in the alternative,

2. If summary judgment is not rendered in plaintiff's favor and a trial is necessary, that the Court, pursuant to the authority of Rules 40 and 79 of the Federal Rules of Civil Procedure, and Rule 6 of the Rules of the United

[fol. 71] States District Court for the Northern District of Ohio, advance this case for trial at its earliest convenience.

/s/ John W. Douglas
Assistant Attorney General

/s/ Robert J. Rotatori
Assistant United States Attorney

/s/ Harland F. Leathers
Attorney, Department of Justice

Attorneys for Plaintiff

CHARLES DONAHUE
Solicitor

JAMES R. BEAIRD
Associate Solicitor

AARON A. CAGHAN
Regional Attorney

U. S. Department of Labor
Of Counsel

[Proof of service omitted in printing]

[fol. 72]

PLAINTIFF'S EXHIBIT "H" TO MOTION FOR SUMMARY JUDGMENT

Dec. 7, 1963

631 Ridge Ave.
Youngstown, Ohio

U. S. Department of Labor.

Dear Sir

I, Cecil Dial, am petitioning the Department of Labor to investigate an election held at Local 125 July 13, 1963.

I have exhausted all means in the Constitution. My protest to the General Executive Board was denied. The protest was made Because the election did not comply with the Constitution or the Lander Griffin Bill.

Fraternally yours,

/s/ Cecil Dial

File, Dec. 9, 1963, DLMR Cleveland

[fol. 73]

PLAINTIFF'S EXHIBIT "I-1" TO MOTION FOR SUMMARY JUDGMENT

COPY

I, Martin M. Mason, Secretary-Treasurer, Local 125, Hod Carriers' Union, 29 Fifth Avenue, Youngstown, Ohio do make the following voluntary statement to R. C. DeMarco who has identified himself to me as a Representative of the Office of Labor-Management and Welfare-Pension Reports, United States Department of Labor. No threats or promises have been made to induce me to make this statement. I know that this voluntary statement may be used in a Court of Law. ..... initials (initialed MMM)

I have served as Secretary-Treasurer since 1955 and I am one of two full time officers of this Local. At our regular April, 1963 meeting we decided to hold a special meeting on May 1, 1963 to call for nominations for Local Offices. Cards were sent to the Local's members advising of the May 1, 1963 nomination meeting about 18 days before May 1, 1963.

At the May 1, 1963 meeting, William Proverbs, President presided. President and I made statements about the Labor Law requirements, mailing of election notices and the requirements of the Laborers' Constitution. ..... (word deleted—correction initialed) Oral nominations were held to select a three man election *(end of page 1 of 12 hand written pages)*

(beginning of page 2 of 12 pages) committee and a secret vote was taken. Frank Jones Sr. was elected to the position of Election Chairman; Donald Phillips and Harold Thomas were elected as committeemen. Frank Jones Sr. then took over the chair for the conduct of nominations for Local Offices. Nominations were orally from the membership. No restrictions were imposed on nominations and nominations were closed only after no further nominations were made from the membership.

[fol. 74] At the regular meeting, May 15, 1963 the election date was determined. Date of June 8, 1963, by membership motion was selected and the place, Laborers' Hall, and the time, 8:00 AM to 6:00 PM was also determined by the membership by motion. As Secretary-Treasurer, I mailed the election notices to members who were listed as paid for the month of April, 1963 on the Local's per capita records to the International. Notices were mailed (postcard) during the week of May 20, 1963, more than 15 days prior to the June 8, 1963 election date..

..... (words deleted—correction initialed)
On May 10, 1963, the Election Committee, Jones, Phillips and Thomas met with ..... me (word deleted—correction initialed) to screen the candidates. *(end of page 2 of 12 hand written pages)*

(beginning of page 3 of 12 pages)

Candidates were required to complete questionnaires and these questionnaires reviewed and ruled on. Candidates were supposed to be in attendance at the May 10, 1963 meeting and those who failed to attend or failed to complete the questionnaire were disqualified. (word crossed out and initialed) This election committee reported to the membership on May 15, 1963, gave its findings and no objections were noted. Election committee furnished me with a list of candidates listed in the order of nomination and I ordered 1000 ballots from the City Printing Company on May 17, 1963. I picked up the ballots on approximately Thursday, June 6, 1963 and they were packed in two packages. On June 6, 1963 I showed the unopened packages of ballots to the election ..... (word crossed out—correction initialed) committee and the ballots were locked in the ballot box and Chairman Jones kept the key. [fol. 75] I did not make an eligibility list. The International record of per capita payments was used to determine eligibility. Any member whose per capita record of a $1.00 payment for April, 1963 was considered eligible to vote. I am aware that the International Constitution, Article VIII, Section 7 provides for Initiation fees, Readmission fees and Dues *(end of page 3 of 12 hand written pages)*

(beginning of page 4 of 12 pages)

and assessments. Section 5 provides that dues are to be paid on the first day of the month and unless paid on or before the last day of the following month, the member shall be considered to be in arrears and suspended without notice. Our Local dues books issued to our members are stamped, "All members over 2 months in arrears will be suspended without notice on the 1st day of the 3rd month." I am also aware that the International, by letter dated February 7, 1963, directed all Locals not to pay per capita for any member for any month if the member had not paid dues to the Local for the month.

I as Secretary-Treasurer of Local 125 have, on my own initiative, paid per capita tax to the International for members who have not paid dues to the Local. Many of these persons should have been automatically suspended. I am also aware that these persons, delinquent over 61 days, should have been required to pay reinstatement fees to Local 125. According to our Constitution, these members who I have carried by paying their per capita tax who have not paid a reinstatement fee ..... (word deleted —correction initialed) are *(end of page 4 of 12 hand written pages)*

[fol. 76] *(beginning of page 5 of 12 pages)*

not members in good standing and they should not have been permitted to vote in Local 125's election. The reason I carried some of these members by paying per capita tax to the International was so that they would work. Unemployment has been high in Youngstown, Ohio and members don't have the money for dues. I paid their per capita out of the General Funds of the Local. However, many persons have been suspended by me for failure to pay dues. I only paid per capita for members I knew had been unemployed, had been long time .... (word deleted—correction initialed) members and I took into consideration personnel hardships and family situations. I have kept no records of persons that I paid per capita for or who had not paid reinstatement fees. I can only approximate at this time. I estimate that from June, 1962 to May, 1963,

I paid per capita for approximately 50-75 members. Of this number, approximately 31 voted on ..... (word deleted—correction initialed) June 8, 1963 although all could have voted if they chose to do so. Listed herein are the names and membership book numbers of some of the persons who voted in the June 8, 1963 election who were not ..... (word deleted—correction initialed) in good standing as of the June 8, 1963 election day: *(end of page 5 of 12 hand written pages)*

(beginning of page 6 of 12 pages)

Name	Book #
1. Edw. Hall	1338
2. G. L. Washington	xxxx 1041 (correction initialed "MMM")
3. Turner Brown	501
4. Fred Porch	455
5. Fred Zackery	100

[fol. 77]

6. Jessie Kelch	305
7. Ivory Holden	1229
8. Willie E. Baker	1285
9. John Buie	3133
10. Nate Cheatham	1832
11. xxxxxx (deleted—initialed "MMM")	xx Did not vote 6/8/63—voted 11/13/63
12. LeRoy Cochrane	606
13. Charles Dickens	272
14. Denis Eley	32
15. Roger Fort, Jr.	1034
16. Warren Goodman	2502
17. John L. Hunter	2294
18. David C. Johnson	2387
19. Robert Lee	1349
20. James Pittman	1218
21. Stephen Sanders	33
22. Thomas Hopson	467
23. Charlie Lee Mackey	2953
24. xxxxxx (deleted—initialed "MMM")	xx Did not vote 6/8/63—voted 7/13/63

(end of page 6 of 12 hand written pages)

(beginning of page 7 of 12 pages)

Name	Book #
26. Brandie Lawrence	2855
27. Frank Jones, Jr.	595
28. Clarence Williams	779

[fol. 78]

29. George Smith	4679
30. William Wilson	733
31. H. E. Victor	2511

The above list represents members who were either delinquent in payment of April, 1963 dues or were persons who were over 61 days delinquent in dues payments during the past year and had not completed full payment of reinstatement fees.

When I paid per capita to the International for delinquent members, I, on occasion, put stamps in the delinquent members dues books so that the member would not be challenged by job stewards when obtaining a job. For this reason, the members ledger card maintained in the Local Office does not correspond with the members dues book or the per capita payment record.

On election day, June 8, 1963, members displayed the dues book to election judge Jones, and the book checked against the per capita record. Dues book was stamped "voted." A ballot was issued and the back of the ballot was block stamped "Voted." Every ballot cast should have had the block stamp "Voted" on the back. I and Jones checked the per capita record and my secretary, Mrs. Lucille Powell stamped the back of the ballots. A stamp "Voted" was also placed next to the voter's name on the per capita record. .... (word deleted—correction initialed) Voting was accomplished in the Local's offices and election committeemen and candidates observers were in the voting area. At 6:00 P.M. polls were closed. Votes were tallied by the election committee in the presence of observers and the results were announced and posted. Business Representative race resulted in a tie.

Frank Jones Sr. called International Regional Office Manager, Arthur Kistemaker, Columbus, Ohio on June 10, [fol. 79] 1963 for instructions to handle the tie. Jones

was ..... instructed (word deleted—correction initialed) to hold a runoff election listing all candidates for that office. I ordered 1000 new ballots from City Printing on June 24, 1963 and July 13, 1963, 8:00 AM to 8:00 PM was selected as election runoff date and time. Mail notices of the July 13, 1963 election were sent *(end of page 8 of 12 hand written pages)*

NOTE: *Insert on top of Page 9 of 12 hand written pages —inserted at the request of Mason*

"On Friday, July 12, 1963 I picked up the runoff ballots, Jones checked the packages and the ballots were placed in the Local's safe until 8:00 AM, July 13, 1963." (initialed "MMM")

(beginning of page 9 of 12 pages)

prior to the required 15 days. Same election committee conducted the July 13, 1963 runoff and the same system was employed. Members whose per capita was listed as paid for May, 1963 were eligible to vote. Again, ineligible persons were ..... (word deleted—correction initialed) on this per capita record and were, in the main, persons whose per capita was paid by me from the Local's general fund. Listed herein are the names ..... (word deleted—correction initialed) and the membership book numbers of some of the persons who voted in the July 13, 1963 runoff Business Representative election who were not in good standing as per the International Constitution as of July 13, 1963:

Name	Book #
G. L. Washington	1041
Fred Porch	455
Fred Zackery	100
Jessie Kelch	305
Ivory Holden	1229
Willie Baker	1285

[fol. 80]

John Buie	3133
Cleve Clark	68
Charles Dickens	272

Name	Book #
Dennis Eley	32
Roger Fort, Jr.	1034

(end of page 9 of 12 hand written pages)

(beginning of page 10 of 12 pages)

Warren Goodman	2502
John Hunter	2294
David Johnson	2387
Robert Lee	1349
John Pittman	1218
Stephen xxx (deleted—initialed "MMM") Sanders	33
Thomas Hopson	467
C. C. Mackey	2953
W. D. Robinson	196
Brawlie Lawrence	2855
xxxxxx (word deleted—correction initialed)	
Frank Jones, Jr.	595
Clarence Williams	779
George Smith	4679
Nate Evans	3356
Paul Wilson	60
C. J. Butcherine	422

[fol. 81]

Anthony LaVolpa	713
W. W. Wilson	733
Mark Miles	917
Paul Goldston	1174
John F. Hamilton	3014
H. E. Victor	2511

(end of page 10 of 12 hand written pages)

(beginning of page 11 of 12 pages)

The above list represents members who were either delinquent in payment of May, 1963 dues or were persons who were over 61 days delinquent in dues payments during the past year and had not completed full payment of reinstatement fees.

No notices of nominations or elections were sent to persons who were suspended as per capita records during and prior to the periods of these elections. To my knowledge,

no one who presented himself on voting days was denied the opportunity to vote.

I have personally examined the members ledger cards ..... (word deleted—correction initialed) of members listed on pages 6, 7, 9 and 10 of this statement and it appears from these ledger records that the persons named herein were ineligible to vote in the June 8 and July 13, 1963 elections according to the provisions of the International Constitution.

I would like to state that my action in carrying some members by paying their per capita tax without receiving dues from them or reinstatement fees was an act of trying to help long time members who were in financial difficulties and was not done to influence *(end of page 11 of 12 hand written pages)*

[fol. 82] *(beginning of page 12 of 12 hand written pages)* or make eligible, persons voting in these elections. Also, I further realize that those who were suspended were not given an opportunity to vote and as such, it would seem that the per capita payments by me was not uniformly applied. However, I judged each case on its merits and gave relief to those loyal members who requested and needed it. (initialed "MMM" 12/17/63)

I have read and initialed the above pages on Tuesday, December 17, 1963 but have delayed signing this statement until I had an opportunity to discuss the statement and its contents with Arthur Kistemaker, International Regional Office Manager, Columbus, Ohio. I have conferred with Kistemaker on Wednesday, December 18, 1963 and have his concurrence in signing this statement.

(initialed "MMM" 12/18/63)

I have read the foregoing statement consisting of 12 pages and I acknowledge it to be true and correct to the best of my knowledge.

/s/ MARTIN M. MASON
Title: Sec'y Treas. Local 125 Laborers
Date December 18, 1963

Witness:

R. C. DeMarco C/O
LMWP, US Dept. of Labor

(end of page 12 of 12 hand written pages)

[fol. 83]

PLAINTIFF'S EXHIBIT "K" TO MOTION FOR SUMMARY JUDGMENT

Washington Area Office
1156 - 15th St., N.W.

January 27, 1964

Mr. Joseph V. Moreschi, President
Hod Carriers, Building & Common Laborers
Union of America, AFL-CIO
906 - 16th Street, N. W.
Washington 6, D. C.

Dear Mr. Moreschi:

Under the authority of Section 402(b) of the Labor-Management Reporting and Disclosure Act and pursuant to a complaint filed, this Office has conducted an investigation into an election of officers conducted by Local 125, Hod Carriers, Building and Common Laborers Union of America, Youngstown, Ohio on June 8 and July 13, 1963. Section 402(b) prescribes that the Secretary of Labor, after investigation and finding probable cause to believe that a violation of Title IV has occurred and has not been remedied, shall bring civil action against the labor organization within sixty days after the filing of the complaint.

The investigation thus far conducted establishes probable cause to believe that the election conducted by Local 125 violated Title IV in the following particulars:

1. Section 401(c) was violated in that:

   a. the local failed to provide adequate safeguards to insure a fair election on June 8, 1963, by permitting unauthorized ballots to be used and counted, and by failing to provide other adequate safeguards;

2. Section 401(c) was violated in that:

a. members not in continuous good standing were permitted to be candidates on June 8, 1963 and July 13, 1963;

b. members delinquent in dues for April, 1963 were permitted to vote on June 8, 1963;

c. members who had not completed payment of readmission fees were permitted to vote on June 8, 1963;

[fol. 84]

d. members who had not paid the constitutionally required readmission fees were permitted to vote on June 8, 1963;

e. members delinquent in dues for May, 1963 were permitted to vote at the July 13, 1963 runoff election;

f. members who had not completed payment of readmission fees were permitted to vote at the July 13, 1963 runoff election;

g. members who had not paid the constitutionally required readmission fees were permitted to vote at the July 13, 1963 runoff election.

The above violations resulted from the Local's payment of per capita tax to the International for certain persons although the Local had not received dues payments from them. Other persons were not afforded this privilege and were dropped from the rolls per constitutional provisions. It is the policy of this Office in appropriate cases involving possible violation of Title IV to advise the parent union involved of the preliminary results of our investigation in order that an opportunity is presented to the parent union to communicate any additional evidence bearing on the violation or on any action which the parent body proposes to take to remedy the violation.

In order that this investigation may be conducted as expeditiously as possible, it would be appreciated if you would communicate with me by January 31, 1964.

Very truly yours,

VIRGIL J. WOLFE
Area Director

cc: Mr. Martin Mason, Financial Secretary
Local 125, HCL
28 Fifth Avenue
Youngstown, Ohio

CLEVEAO
REG. III
DCO-BET

[fol. 85]

PLAINTIFF'S EXHIBIT "L" TO MOTION FOR SUMMARY JUDGMENT

[Letterhead of International Hod Carriers' Building and Common Laborers' Union of America omitted in printing]

January 31, 1964

United States Department of Labor
Office of Labor-Management and
Welfare-Pension Reports
1156 15th Street, N. W.
Washington 25, D. C.
Attention: Virgil J. Wolfe

Dear Mr. Wolfe:

This will acknowledge receipt of your letter of January 27, 1964, hand delivered to my office the same date, reporting on the Secretary of Labor's investigation of the complaint of Cecil Dial regarding the election of officers conducted by our Local Union 125, Youngstown, Ohio.

In your letter you mention two dates in reference to the protested election conducted by Local Union 125—namely, June 8 and July 13, 1963. Please be advised that it is the position of this International Union that only the July 13th election may properly be investigated and considered by your office under the provisions of Title IV, and that the Secretary of Labor lacks jurisdiction with respect to the June 8, 1963 election.

The Local Union conducted its regular election of officers on June 8, 1963. Under the provisions of Article XII, Section 8, of the Uniform Local Union Constitution, incorporated into Title IV, which is applicable to, and binding upon Local Union 125, its officers and members, "any person aggrieved" with the nomination process must protest same prior to the holding of the election and "any person aggrieved" with the conduct of the election itself must protest directly to the General Executive Board of this International Union "within thirty days after the

election." There was no protest filed with respect to the nomination *prior to* the conduct of the election of June 8, 1963, and there was no protest of the election of June 8 filed with the General Executive Board *within thirty days* after the conduct of same, by any member of Local 125. Accordingly, therefore, under both the provisions of the Constitution and Title IV of the Landrum-Griffin Act, no one sought to invoke the available remedies to protest the June 8, 1963 election, and any further inquiry with respect thereto is without proper constitutional or statutory authority.

[fol. 86] On the other hand, as a result of the tally of votes cast for the office of Business Representative in the June 8, 1963 election, two of the three candidates running for that office received the same number of votes and the Local Union decided that a run-off election should be held. Accordingly, the Local Union conducted a re-run election only for the office of Business Representative on July 13, 1963. Thereafter, and within the thirty day appeal period provided in the Uniform Local Union Constitution, Cecil Dial, one of the candidates for the office of Business Representative, appealed from the election of July 13, 1963. With respect to that appeal, the appellant and the Local Union, after due notice, were afforded the opportunity of appearing before a panel of the General Executive Board where documents and testimony were submitted for consideration by the General Executive Board with respect to the issues raised by the appeal. By communication dated December 2, 1963, a copy of which is in your possession, the General Executive Board notified the appellant, Cecil Dial, that the evidence submitted failed to support his appeal.

With respect to the specific items raised by you in your letter of January 27, 1964, and in view of the above facts the following constitutes the further position of this International Union: As to your item 1(a)—as it relates to the June 8, 1963 election, this matter has not been exhausted and further inquiry is foreclosed by virtue of the provisions of the Uniform Local Union Constitution, and the Landrum-Griffin Act.

As to 2(a)—as it also deals with the June 8, 1963 election, this is governed by our previous position stated above. With respect to the July 13, 1963, election for the office of Business Representative, the only candidates whose continuous good standing would be relevant would be the three candidates running for the one office of Business Representative. At no time was this issue raised in the appeal of Mr. Dial, and no evidence has been submitted by your office to indicate that at the time of the July 13, 1963 election any of the three candidates running for the office of Business Representative were not in good standing.

As to 2(b), 2(c), and 2(d)—as these matters relate to the June 8, 1963 election, further inquiry is foreclosed on the same basis as stated in our position on your item 1.

As to 2(e)—you indicate in vague terms, that delinquent "members" were permitted to vote in the July 13, 1963 run-off election, but you do not indicate who these members were or how many were involved. You will note that in findings (4) and (5) of the General Executive Board's decision of December 2, 1963, that the appellant specifically alleged that 9 ineligible members voted in the July 13, 1963 election, and that the margin of difference between the appellant and the winning candidate for the office of Business Representative was 19 votes. It is clear, [fol. 87] therefore, that on the basis of the evidence presented by the appellant the outcome of the election for the office of Business Representative could not have been affected. Your office has not presented to us any evidence to the contrary.

As to 2(f) and 2(g)—again you state that "members" who had not completed the payment of readmission fees or presumably "members" who had not made any payment of readmission fee were permitted to vote in the July 13, 1963 election. It is impossible to determine whether you include the "members" stated in 2(f) and (g) in the "members" referred to in item 2(e). It has not been brought to our attention by your office, who or how many members fall into your category 2(f) and 2(g), and whether, in fact, all of the persons you refer to in items

2(e), (f) and (g) would be sufficient in number to affect the outcome of the election for the office of Business Representative.

As you well know, from prior experience in Title IV election protests, this International Union stands ready and is willing to cooperate with your office in the effort to see that proper and lawful procedures are followed in the conduct of elections by our affiliated Local Unions. Accordingly, therefore, we request that you submit to us the names of the individuals whom you place in items 2(e), (f) and (g), and if still applicable after your consideration of our position, the basis upon which you conclude that any of the three candidates who ran for the office of Business Representative in the July 13, 1963, re-run election were not in continuous good standing as stated in your Item 2(a). After receipt of this information, I will direct that inquiry be made to verify the information which you have presented and, after such inquiry, in the event your information is verified, the International Union, on its own motion, will restore the case to its docket for reconsideration and action by the General Executive Board.

Very truly yours,

/s/ Jos. V. Moreschi
JOS. V. MORESCHI
General President

[fol. 88]

PLAINTIFF'S EXHIBIT M TO MOTION FOR SUMMARY JUDGMENT

AFFIDAVIT

THE STATE OF MARYLAND)
) SS:
COUNTY OF MONTGOMERY)

After first being duly sworn, James R. Beaird deposes and says:

I am an Associate Solicitor, in charge of the Division of Labor-Management Laws, Office of the Solicitor, United States Department of Labor. This division renders legal services to the Office of Labor-Management and Welfare-Pension Reports, United States Department of Labor.

On or about February 4, 1964, prior to the date the complaint in this case was filed, accompanied by George T. Avery, now Counsel for Labor-Management and Welfare-Pension Litigation in the said Division, I went to the office of Robert J. Connerton, General Counsel for the International Hod Carriers', Building and Common Laborers' Union of America, where we conferred with Mr. Connerton and his assistant, Mr. Arthur Schiller, concerning the violations revealed by this Department's investigation of the election of officers by defendant, Local 125, on June 8, 1963, and the resulting run-off on July 13, 1963.

At that conference we advised Messrs. Connerton and Schiller that in the election held on June 8, 1963, some members who, according to defendant's constitution, were under automatic suspension for non-payment of dues, and who had not paid the readmission fee required for reinstatement, were permitted to vote and to be candidates for office. We pointed out that the investigation revealed that 16 of the 27 candidates running for office on June 8, 1963, were ineligible to be candidates; that one of those ineligible candidates, Andrew Jackson, tied an eligible

[fol. 89] candidate, Cecil Dial, in the number of votes tallied for the office of Business Representative; that in the run-off held on July 13, 1963, the ineligible candidate was the winner; and that several others of the 16 ineligible candidates were winners in the election of June 8th. It was further pointed out that approximately 50 ineligible members voted on June 8; and approximately 60 ineligible members voted on July 13, 1963.

During the conference we discussed the nature of these violations; that they resulted from the practice of the Secretary-Treasurer of defendant Local paying the per capita tax to the International Union from the general fund of the Local in behalf of approximately 75 members who actually were delinquent in their dues; that such practice was contrary to the constitution, and that the International Union had, on February 7, 1963, advised all local unions that such payments were improper and therefore void and invalid; and that eligibility to run for office and to vote was determined upon the per capita tax list, and these delinquent members were therefore erroneously shown as eligible. It was further discussed that such practice was discriminatory since in actuality more than two hundred members were suspended for dues delinquency in the few months before the election, and were thus ineligible to be candidates for office or to vote in the election of officers.

During this conference it was made clear that the foregoing violations were present in the balloting on June 8, 1963, and in the run-off balloting on July 13, 1963, and [fol. 90] the International Union was requested to set aside the whole election, the June 8th balloting as well as the run-off on July 13, which it declined to do.

/s/ James R. Beaird
JAMES R. BEAIRD
Associate Solicitor

Sworn to and subscribed before me, the undersigned authority, on this 30th day of April, 1965.

/s/ R. Cresap Davis

[SEAL]

[fol. 91]

PLAINTIFF'S EXHIBIT N TO MOTION FOR SUMMARY JUDGMENT

AFFIDAVIT

THE STATE OF MARYLAND)
) SS:
COUNTY OF MONTGOMERY)

After first being duly sworn, Frank M. Kleiler deposes and says:

I am the Director of the Office of Labor-Management and Welfare-Pension Reports, United States Department of Labor, and my administrative responsibility includes the enforcement of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, hereinafter referred to as the Act, which pertains to the election of union officers.

In enforcing the election provisions of that Title, this Office generally uses the following procedure:

(a) Upon receipt of a complaint from a union member, complaining of the conduct of his union's regularly scheduled election of union officers, an investigation is initiated. The first stages of the investigation are to determine (1) whether the complaining union member is a member in good standing and (2) whether he has complied with the requirements of section 402(a) of the Act with respect to exhaustion or invocation of the remedies available to him under the constitution and by-laws of his union.

(b) If it is found that the complaining union member is a member in good standing and has properly complied with the requirements of section 402(a) with regard to exhaustion or invocation of his union's internal procedures, an investigation of the conduct of the union's election proceedings is made. Upon completion of the investigation, a letter is written to the parent union, with a copy to the local union, pointing out the violations, if any, which were uncovered and which, in our opinion, may

[fol. 92] have affected the election's outcome. This letter invites the union to present any evidence it may have bearing on such apparent violations, and requests the union to advise us of any corrective action it proposes to take to remedy such apparent violations. The violations listed in the letter to the union, in line with this Department's interpretation of section 402 of the Act, are not limited of those complained of by the union member in his initial protest to the union, but include all violations of section 401 of the Act disclosed by the investigation which may have had an effect upon the outcome of the election. In many instances, our investigation has disclosed violations of the Act, other than those complained of by the union member, which may have affected the election's outcome.

(c) If the union refuses to take action to correct the violations, we recommend to the Solicitor of Labor that a suit seeking remedial relief be instituted in the appropriate United States District Court. The complaint in such action is likewise not limited only to those matters raised by the complaining union member in his protest to his union.

This Department, charged with the administration and enforcement of the election provisions of the Act and in line with its long-standing and consistent interpretation of section 402 of the Act—that a valid complaint filed with the Secretary by a union member concerning the conduct of an election opens to investigation and enforcement all phases of that election which are governed by the Act—has instituted numerous court actions, several of which are still pending, in which investigation disclosed violations of section 401 of the Act which had not been included in the complaining member's internal union protest.

[fol. 93] The decision of the Court in this case, granting defendant's motion to dismiss those parts of the complaint which were not specifically included in the complaining member's internal union protest, vitally affects not only several pending cases but the whole Title IV enforcement program of this Department. The principle adopted in that decision would require that this Department leave unchal-

lenged many clear violations of the Act; violations which the particular labor organization has chosen to ignore, and which have no other remedy than through the Secretary, since section 403 of the Act precludes any other form of action to challenge an election already conducted. It is, therefore, of the utmost importance to the administration and enforcement of Title IV of the LMRDA that there be a speedy resolution of the questions involved in the Court's decision.

/s/ Frank M. Kleiler
FRANK M. KLEILER
Director of the Office of Labor-Management and Welfare-Pension Reports, United States Department of Labor

Sworn to and subscribed before me, the undersigned authority, this 24th day of May, 1965.

/s/ R. Cresap Davis
Notary Public

[SEAL]

[fol. 94] MR:ad 7-16-65 1-4

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil No. C 64-99

* * * *

W. WILLARD WIRTZ, Secretary of Labor, PLAINTIFF

-vs-

LOCAL UNION NO. 125, INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABORERS' UNION OF AMERICA, DEFENDANT

BRIEF IN OPPOSITION TO THE MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE TO ADVANCE ON THE TRIAL DOCKET—Filed July 19, 1965

[Omitted in printing]

* * * *

[fol. 95]

EXHIBIT 1 TO BRIEF IN OPPOSITION TO THE MOTION FOR SUMMARY JUDGMENT, ETC.

STATE OF OHIO)
) SS
COUNTY OF FRANKLIN)

AFFIDAVIT OF MARTIN M. MASON

Martin M. Mason being duly sworn deposes and says:

This affidavit is made in opposition to the motion for Summary Judgment filed by the plaintiff against Local 125.

I have read the papers submitted in support of the motion. The plaintiff contends that Andrew Jackson was not in good standing when he was a candidate for office in May and June 1963. In the books of the Union, Jackson paid his April 1963 dues on May 6, 1963 as he had a right to do. This paid him up for April 1963 and Jackson was still in good standing as a member through the month of May. On July 1, 1963, Jackson paid his May and June 1963 dues and he was still a member in good standing for the entire month of July. A copy of Jackson's membership ledger card is attached.

The plaintiff also urges that many members for whom I paid their per capita tax were not eligible to vote. In the Fall of 1962 and Spring of 1963 there was a lot of unemployment in the Youngstown area. A lot of men who had been long time members could not find work. They wanted to remain members and be eligible for any work that came along. They asked me for consideration as in the past to pay their per capita tax and keep their membership alive. This was not a practice I set up but was procedure that had been long established prior to my [fol. 96] coming into office. I did this to help and assist these old time members. I explained this fully in my statement, plaintiff's exhibit "I". I think I should have an opportunity to explain this to the Court by testimony and not have this motion decided on these papers.

Each individual who asked me for consideration was considered based upon his length of unemployment, length of Union membership and family situation. I never considered their eligibility to vote or used this procedure to get votes for one or another candidate. I had no personal interest in the outcome of the run-off election since I had received a clear majority of votes for Secretary-Treasurer at the earlier election in June 1963.

I attended the hearing on October 24, 1963 at Chicago where the protest of Cecil Dial defeated by Jackson was heard. Dial was only able to produce proof of nine (9) ineligible votes which could not affect the outcome of the election.

I also want to say that there is no constitutional provision for a run-off election in case of a tie vote. Therefore the judges of election on instructions from the International Union held another election for this office of Business Representative on notice and with the same candidates. In the second election held on July 13, 1963 Jackson received a majority of the votes cast.

/s/ MARTIN M. MASON

Sworn to before me and subscribed in my presence this 11th day of July, 1965.

/s/ MORTIMER RIEMER
MORTIMER RIEMER, Attorney
Notary Public—State of Ohio
My Commission has no expiration date.
Section 147.03 R. C.

[SEAL]

[fol. 97]

EXHIBIT 1(a)

Date	Total	Paid Thru	Local Dues	I. U. Dues	I. U. Reg. No.
2-23-62	4.00		3.00	1.00	2022
4-16-62	8.00	Mar	6.00	2.00	2950
4-16-62	5.00	Apr	4.00	1.00	2951
9-24-62	5.00		4.00	1.00	5998
10- 3-62	15.00	Sept	12.00	3.00	6276
11-26-62	5.00	Oct	4.00	1.00	6924
1- 4-63	10.00	Dec	8.00	2.00	7527
3- 1-63	5.00	Jan	4.00	1.00	5172
4- 1-63	10.00	March	8.00	2.00	8202
5- 6-63	5.00	Apr	4.00	1.00	8803
7- 1-63	10.00	June	8.00	2.00	9554
9- 3-63	5.00	July	4.00	1.00	20794
10- 1-63	5.00	Aug	4.00	1.00	22127
11- 5-63	5.00	Sept	4.00	1.00	10475

Book No. 3219 JACKSON ANDREW E. 1721 Carter Avenue—Hubbard, Ohio

[fol. 98]

EXHIBIT 1(b)

LOCAL NO. 125

QUESTIONNAIRE ON QUALIFICATIONS FOR OFFICE

1. Date of Initiation in International Union
   Month ..... Year .....
2. When did you become member of Local Union .....
   Month ..... Year .....
3. Are you a citizen? .....
4. Are you literate and competent to perform duties of office for which you are a candidate. .....
   .....
5. (a) Have you been employed or elected to serve as an officer or employee of Local .....? In what capacity ..... What was the last date you were elected or employed? .....
   .....
   (b) If now unemployed, when did you last work at the calling of a Laborer? .....
   .....
   (c) Have you actively sought work as a Laborer?
   .....
   (d) Are you unemployed now due to sickness or disability? .....
   State what sickness ..... What disability? .....
6. Have you been debarred by the local union after trial from holding office, is so, state when and why .....
   .....
7. Are you a member of, or a sympathizer with any organization that has for its purpose, the overthrow of this organization or of the Government of the United States, or of the Dominion of Canada by force or violence, or who intends to use his office, if elected, as a cloak to effect purposes inimical to the scope and policies of this organization? .....
   .....

8. Do you qualify for office under the Constitution as adopted at 14th Convention, October 16-20, 1961, and in accordance with provisions of existing law? .....

.....

9. Do you agree? A candidate must agree to observe, conform and comply with all of the terms and provisions of the International Constitution, the Uniform Local Union Constitution and the Uniform District Council Constitution and all of the rules, regulations, policies, practices and lawful orders and decision adopted and promulgated in the furtherance and administration of the provisions of the said Constitutions. .....

.....

10. Do you agree to refrain from conduct that would interfere with the proper conduct of all business of the organization? .....

.....

11. Do you agree to recognize your responsibility toward the Union as an institution? .....

.....

12. Are you subject to any of the conditions imposed under Section 504 as stated in the Labor-Management Reporting & Disclosure Act of 1959? If so state what part. .....

.....

.....

Signed .....

Address .....

Book No. .....

[fol. 99]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

[File Endorsement Omitted]

STATE OF OHIO)
) SS
COUNTY OF CUYAHOGA)

AFFIDAVIT—Filed, January 27, 1966

ROBERT J. CONNERTON, being first duly sworn, deposes and says:

I am General Counsel of Laborers' International Union of North America, AFL-CIO, formerly known as International Hod Carriers', Building and Common Laborers' Union of America. I am a member of the bar duly admitted to practice in the Sixth Circuit, United States Court of Appeals, and a resident of the District of Columbia. I maintain my offices at the headquarters of the International Union, 905 - 16th Street, N.W., Washington, D.C.

My duties as General Counsel are set forth in Article IX, Section 18 of the International Union Constitution, a copy of which is attached hereto. The aforesaid section authorizes me as General Counsel to "be present and have a voice in all conventions, conferences, meetings of the General Executive Board or of the International Union" (Page 29, Constitution, Ex. 1 attached).

By virtue of the duties entrusted to me as General Counsel, I am familiar with the contents of and the reasons for promulgating the document attached as Exhibit 2, dated January 17, 1966 addressed to all affiliated local unions, district councils and members, concerning the Right to Vote.

[fol. 100] The International Union has affiliated with it approximately 950 local unions and approximately 500,000 members throughout the United States and Canada.

These affiliated local unions are governed by the provisions of the International Union Constitution and the Uniform Local Union Constitution. The interpretation of the provisions of both constitutions is lodged in the General Executive Board and General President, Article VIII, Section 2(d), Article IX, Section 4 of the International Union Constitution, respectively, and Article I of the Uniform Local Union Constitution. I know that pursuant to the instructions of the General Executive Board the general officers of the International Union caused to be promulgated to all of its 950 affiliates, Exhibit 2.

This formal constitutional interpretation by the General Executive Board binding on all affiliated local unions and officers, reaffirms the democratic principles guaranteed in the unions' constitutions and the Act, that no member in good standing on election day shall be deprived of the right to vote.

/s/ Robert J. Connerton
ROBERT J. CONNERTON

SWORN TO BEFORE ME, and subscribed in my presence, this 27th day of January, 1966.

/s/ Agnes K. Driscoll
AGNES K. DRISCOLL
Notary Public
My Commission Expires April 2, 1968

[SEAL]

[fol. 101]

EXHIBIT 2 TO AFFIDAVIT

[Letterhead of International Hod Carriers' Building and Common Laborers' Union of America omitted in printing]

January 17, 1966

TO ALL AFFILIATED LOCAL UNIONS, DISTRICT COUNCILS AND MEMBERS

RE: Right to Vote

Dear Sirs and Brothers:

The General Executive Board, at its November 29-December 10, 1965 meeting was made aware of a grave danger to our membership, which has developed as a result of a *misinterpretation* of the Uniform Local Union Constitution and Release # 1 of 1963, and which is threatening to deprive many members of long standing of their rights and benefits under the Union's Constitution and collective bargaining agreements, particularly the right, otherwise available, under the Union's Constitution to vote in the Union's general election for the candidate of their choice.

The General Executive Board was presented with the issue of whether or not members in good standing *on the day of election* must be deprived of their right to *vote on election day* because at one time or another during the course of their membership, dues which they offered late were accepted by the Local Union, and the Local Union remitted per capita tax within the Constitutional period to the International Union, as a result of which the member's good standing was not, in fact, interrupted.

The General Executive Board, for years, knew of a long-standing practice in many Local Unions where per capita tax payments were being improperly forwarded to the International Union by Local Unions. Release # 1 of 1963 was directed principally toward advising Secretary-Treas-

urers of Local Unions on the proper conduct of their office, the payment of dues and the persons on whose behalf per capita tax should be forwarded to the International Union. However, nothing contained in Release # 1 nor in the Union's Constitution, stated in terms or inferred, that such a member whose good standing was not interrupted should be deprived of his legal and Constitutional right, otherwise available, to vote when he approached the polling place on election day. Nor was this, in fact, the intent of the General Executive Board in issuing Release # 1, nor of the drafters of the Uniform Local Union Constitution.

Indeed, to the contrary, the Board had consistently maintained the position throughout the years, that its Constitution must be interpreted as a *living document* in the light of the Union's history and tradition—giving due regard to its unique and real needs—not from a formalistic standpoint. It was never the intention of the Union [fol. 102] in adopting its Constitution, or of the General Executive Board in issuing Release # 1 or in otherwise interpreting its Constitution to *deprive members* of their right to vote. The Board had always interpreted its Constitution liberally to preserve the right of members to vote. Particularly, in dealing with problems in the election area, the Board had always placed substantial requirements over form. The Board will continue to adhere to this view.

The Board was troubled by the misinterpretation of the Constitution and Release # 1, which threatens to deprive wholesale numbers of members of their right to vote under the Union's Constitution and the Act. First, it felt that such an interpretation was unduly infringing upon the prerogative of the Board to interpret its Constitution in a fair and responsible manner in the interest of the membership, and was seeking to substitute the judgment of persons outside the Union on the meaning of the Union's Constitution for that of the Union's governing body, which had been elected by the membership and charged with that responsibility.

But, in the Board's view, the principal vice of this hyper-technical interpretation was that it completely ignored the unique, real problems confronting the Union and its membership.

The Board in interpreting its Constitution, is charged with the responsibility of giving due regard to the unique problems confronting the membership.

In issuing Release # 1, it was attempting to instruct its Locals on solid financial practices to promote their long run interests. The Board adheres to that view and is in no way attempting to relieve Secretary-Treasurers from their obligations. The Board knew then and it knows now that if its Constitution was construed to disenfranchise such members, a very substantial percentage of the total membership would be deprived of their right to vote. It knew then and it knows now that if such a harsh interpretation was placed upon the Union's Constitution, it would result in depriving many tens of thousands of their members and their families of death benefits built up over the year and of pension rights under collective bargained pension plans throughout this country. Moreover, it knows that if the Union were to adopt the interpretation urged, it could only suspend those members which would simply mean that they would lose their benefits, accruing over the years and be required to pay a new initiation fee under the Union's Constitution as a new member. The Board flatly rejected the opportunity for the International Union collecting such a financial windfall and it instructed the Executive Officers to advise each affiliate of the following action and take whatever possible actions are necessary to defend the right of the membership to act in that regard.

After due consideration, the Board

"VOTED: In accordance with the power and authority vested in it by the International Union Constitution, Uniform Local Union Constitution, and Uniform District Council Constitution, that its Constitutional provisions shall not be inter-

[fol. 103] preted to deprive members of their legal and constitutional right to vote in those instances where local unions have accepted dues late and remitted per capita tax within the Constitutional period to this International Union, so that the local unions were never notified by the International Union that such members were suspended. To the extent that anything contained in Release # 1 of 1963 can be construed to reach a contrary conclusion or to cast doubt upon this position, it is hereby modified to that extent nunc pro tunc."

All affiliates and members please take note and abide yourselves accordingly.

Respectfully and fraternally yours,
LABORERS' INTERNATIONAL UNION
OF NORTH AMERICA

/s/ Jos. V. Moreschi
JOS. V. MORESCHI
General President

/s/ Peter Fosco
PETER FOSCO
General Secretary-Treasurer

[fol. 104]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil Action No. C 64-99

[File Endorsement Omitted]

W. WILLARD WIRTZ, Secretary of Labor,
United States Department of Labor, PLAINTIFF

-vs-

LOCAL UNION NO. 125, INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABORERS' UNION OF AMERICA, DEFENDANT

MEMORANDUM OPINION—Filed April 1, 1966

BATTISTI, J.:

On June 8, 1963, defendant held a general election of officers. In this election the vote for the office of Business Representative resulted in a tie between two of the three candidates, those two being Cecil Dial and Andrew E. Jackson. On July 13, 1963, defendant held a run-off election for the office of Business Representative. In the run-off election Andrew E. Jackson received 198 votes, Cecil Dial received 179 votes, and Irwin Ferry received 2 votes.[1] Subsequent to the July 13 election, Andrew Jackson was sworn in as Business Representative of the defendant.

On August 11, 1963, Cecil Dial, acting pursuant to defendant's constitution, protested the conduct of the run-off election to the General Executive Board of the International Hod Carriers' Building and Common Laborers' [fol. 105] Union of America. This protest was denied by the General Executive Board on December 2, 1963. On December 9, 1963, Dial filed a complaint with the Secretary of Labor. Upon receipt of Dial's complaint the Sec-

[1] Mr. Ferry was the third candidate in the June 8 election.

retary investigated both the June 8, 1963, general election and the July 13, 1963, run-off election.

On February 7, 1964, the Secretary filed the present action under the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C.A. §§ 401-530 (hereinafter referred to as the Act) seeking an order setting aside the June 8, 1963, general election and also the July 13, 1963, run-off election. In his complaint the Secretary alleged *inter alia* that the defendant had violated Section 401 of the Act (29 U.S.C.A. § 481) in that it had failed to conduct the two elections in accordance with its constitution and bylaws. The Secretary further alleged that these violations may have affected the outcome of the two elections.

In a memorandum opinion dated July 13, 1964, Chief Judge Connell granted the defendant's motion to dismiss that portion of the complaint directed to the general election of June 8, 1963. *Wirtz* v. *Local No. 125, International Hod Carriers' Building and Common Laborers' Union of America*, 231 F.Supp. 590 (1964). In dismissing that portion of the complaint, Judge Connell found that since no member of the defendant had complained internally about the conduct of the June 8 election, the Secretary's allegations with regard to said election were not, as [fol. 106] required by Section 402 of the Act (29 U.S.C.A. § 482),[2] predicated upon a complaint by a union member who had exhausted his internal remedies.

The Secretary has now moved for summary judgment with regard to that portion of his complaint directed to

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[2] Section 402 of the Act (29 U.S.C.A. § 482) provides in pertinent part as follows: (a) A member of a labor organization—(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or (2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation, may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of Section 401 (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). * * * (b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this title has occurred and has not been remedies, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization. * * *

the run-off election of July 13. In the alternative, the Secretary moves that the action be advanced on the trial docket.

As has already been noted, the Secretary alleges that defendant, in violation of Section 401(e) of the Act (29 U.S.C.A. § 481(e)), failed to conduct the July 13 election in accordance with the applicable provisions of its constitution and bylaws. Specifically, the Secretary alleges that the defendant (1) permitted ineligible candidates to run for office, and (2) permitted persons to vote who were ineligible to do so.

[fol. 107] Section 401(e) of the Act (29 U.S.C.A. § 481(e)) provides in pertinent part as follows:

> (e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. * * * Each member in good standing shall be entitled to one vote. * * * The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this title.

It is clear, and the defendant does not urge otherwise, that the run-off election of July 13 comes within the purview of Section 401(e) of the Act. The alleged violations of Section 401(e) will be considered separately below.

ALLOWING INELIGIBLE PERSONS TO VOTE IN THE JULY 13 ELECTION.[3]

Article VIII of Local 125's constitution provides in pertinent part as follows:

> "Section 5. The monthly dues are due on the first day of the month and unless paid on or before the last day of the following month, the member *shall be* [fol. 108] *considered to be in arrears and suspended without notice.* (Emphasis supplied.)
>
> * * * *
>
> "Section 7. The readmission fee for persons who are suspended for nonpayment of dues, assessments or fines to the Local Union and who remain suspended for a period of less than one year, shall be the amount of such assessments or fines in addition to the following: * * * [figures omitted] * * * Once the member has defaulted in the payment of dues, as herein provided, the date of suspension referred to in this section, shall be the first day after the month for which the member's dues were last paid.
>
> "Section 8. *Persons in arrears have no right to attend meetings nor any other rights except the right to be readmitted in accordance with the above section* [Section 7]. If a member becomes suspended by reason of his own conduct he can only be readmitted through the Local Union of which he was a member when suspended. Readmitted members shall be considered new members from the date of their readmission. (Emphasis supplied.)

It is on the basis of the above-quoted portions of Article VIII of the defendant's constitution that the Secretary predicates his claim that certain ineligible persons voted in the July 13 election. The Secretary urges that under

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[3] It is clear that the portion of the Secretary's complaint directed to the matter of the eligibility of voters in the July 13 election is, as required by Section 402 of the Act (29 U.S.C.A. § 482), predicated upon a complaint by a member of the defendant who has exhausted his internal remedies.

the clear and unambiguous language of Article VIII a member who has not paid his dues within the time provided by Section 5 is automatically in arrears and should be suspended without notice. The Secretary further urges that once a member has fallen in arrears, he loses all rights except the right to be readmitted in accordance with Section 8 of defendant's constitution and, therefore, is not entitled to vote in union elections unless and until he has paid the mandatory readmission fee.

[fol. 109] Article XVIII, § 3, of the International Constitution provides as follows:

> Section 3. Each Local Union shall, through its Secretary-Treasurer, pay to the International Union a per capita tax of $1.00 per member per month, payable for the current month on each member in the Local Union and an initiation fee of $5.00 for each member registered with the International Union as a member and $2.50 for each member readmitted; each initiation fee and each readmission fee must be accompanied with the per capita tax for the month in which the member is registered or readmitted.

It is clear from the defendant's answers to the plaintiff's interrogatories that defendant maintains "per capita tax sheets" reflecting payments made to the International pursuant to Article XVIII, § 3, of the International Constitution.

At the July 13 election, members listed as paid for the month of May, 1963 on the Secretary-Treasurer's per capita tax sheets were deemed to be in good standing and, thus, eligible to vote. (Admission 19.) These per capita tax sheets did not, however, accurately reflect the names of those persons who were actually in good standing as of July 13. (Admission 11.) Said sheets were inaccurate because the Secretary-Treasurer of the defendant had paid the per capita tax for certain persons who were delinquent in the payment of their May, 1963 dues and also for certain persons who had either not paid or had not completed payment of mandatory readmission fees. Thus, of the 379 persons voting in the July 13 election, 58 were

delinquent in their payments to the union. (See responses to plaintiff's request for admissions Nos. 20 and 21.)[4] [fol. 110] Mr. Martin M. Mason, Secretary-Treasurer of the defendant, has, by way of affidavit, stated as follows:

> "The plaintiff also urges that many members for whom I paid their per capita tax were not eligible to vote. In the fall of 1962 and spring of 1963, there was a lot of unemployment in the Youngstown area. A lot of men who had been long-time members could not find work. They wanted to remain members and be eligible for any work that came along. They asked me for consideration as in the past to pay their per capita tax and keep their membership alive. This was not a practice I set up but was procedure that had been long established prior to my coming into office. I did this to help and assist these old time members. I explained this fully in my statement, plaintiff's exhibit "I". I think I should have an opportunity to explain this to the Court by testimony and not have this motion decided on these papers." (Defendant's exhibit 1.)

It might be noted that in plaintiff's exhibit I, the statement referred to in the above-quoted portion of Mr. Mason's affidavit, Mr. Mason stated in part as follows:

> "I as Secretary-Treasurer of Local 125 have, on my own initiative, paid per capita tax to the International for members who have not paid dues to the Local. Many of these persons should have been automatically suspended. I am also aware that these persons, delinquent over 61 days, should have been required to pay reinstatement fees to Local 125. According to our constitution, these members I have carried by paying their per capita tax who have not paid a reinstatement fee are not members in good standing and they should not have been permitted to

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[4] As to 13 of the 58, the facts giving rise to an obligation to pay a readmission fee are not readily apparent. See Admissions 21(d), (e), (k), (l), (u), (w), (z), (ak), (as), (ax), (ay), (az), (bg).

vote in Local 125's election. The reason I carried some of these members by paying per capita tax to the International was so that they would work. Unemployment has been high in Youngstown, Ohio, and members don't have the money for dues. I paid their per capita out of the General Funds of the Local. However, many persons have been suspended by me for failure to pay dues. I only paid per capita for [fol. 111] members I knew had been unemployed, had been long time members and I took into consideration personal hardships and family situations. I have kept no records of persons that I paid per capita for or who had not paid reinstatement fees."

Prior to the July 13 election it had been called to the attention of the International that the Secretary-Treasurers of certain locals were forwarding per-capita tax payments to the International for certain persons who were delinquent in payments to the local. On February 7, 1963, in a letter addressed to all affiliated local unions, district councils, and members, the General President and the Secretary-Treasurer of the International made the following comments with regard to this practice:

> The General Executive Board, at a recent meeting, was made aware of several complaints and protests regarding payments of constitutional fees, such as dues, initiation fees, readmission fees, et al.
>
> At the outset, it is to be observed that corresponding payments made by Local Unions to the General Secretary-Treasurer of the International Union, such as per capita tax, etc., are received and accepted on the presumption of propriety; namely, that the payments submitted are pursuant to and in accordance with the full intent of constitutional requirements. To illustrate: when the Secretary-Treasurer of a Local Union forwards per capita tax in behalf of a member, the presumption is that the Secretary-Treasurer has received payment of the dues for the particular month, directly from the member. It now appears that, in some instances, Secretaries Treasurers of Local Unions forward per capita tax to the Inter-

national Union for certain members who have not paid dues for the corresponding month.

The information further discloses that, in some in-
[fol. 112] stances, there has been a practice of so-called "free dues". This has occurred and has been applied to various officers of Local Unions, stewards on jobs, sick members, and for individuals in other categories or capacities.

It must be noted that such offer of per capita tax is definitely improper because it is not based on a payment made directly by the member to the Local Union and, accordingly, any submission of per capita tax by the Secretary-Treasurer is therefore void, invalid and of no effect. You will also notice that, this being so, the member is not in good standing under the provisions of the Constitution.

In order that this entire area of mistaken and improper activity may be corrected, the General Executive Board, at its meeting held January 9-29, 1963, voted, that in all instances where and when the General Secretary-Treasurer, on and after April 1, 1963, finds that per capita tax and other fees submitted by Local Unions, are not based upon corresponding payments directly made by the member to the Local Union, such submission shall be deemed to be invalid, improper and of no effect.

It must be noted, as stated above, that where and when such finding occurs, the result is, that the members affected are not in good standing if the delinquency is for a period longer than that specified and provided for in the Constitution.

* * * *

All affiliates and members please take not and abide yourselves accordingly. (Plaintiff's exhibit C)

It is manifestly clear that the Secretary-Treasurer of the defendant failed to comply with International Union's directive of February 7, 1963. In fact, he acted directly contrary to the instructions contained therein. It is fur-

ther clear that by using the Secretary-Treasurer's per-capita tax reports to determine voter eligibility for the July 13 election, 58 persons were permitted to vote not-[fol. 113] withstanding the fact that they were delinquent in their payments to the defendant. (Admissions 20, 21.)

Were the 58 persons who were delinquent in their payments to the defendant union eligible to vote in the July 13 election? In answering this question, we must look to the constitution of the defendant union. In 87 Corpus Juris Secundum, *Trade Unions*, § 13, p. 776, the following observations are made relative to the construction of union constitutions:

> "Trade union constitutions should be read in their living context. The interpretation or construction of the constitution and laws of a union is for the union, through its appropriate board or officers; and the courts will accept such interpretation, as long as there is no claim of fraud, and as long as the officer or body on which this power of interpretation has been conferred does not substitute legislation or amendment for construction, does not transgress the bounds of reason, common sense, or fairness, or act arbitrarily, or contravene public policy or the law of the land, or destroy the property or contractual rights of, the members. Where the language of a rule is clear, no official may nullify it under the guise of interpretation."

As has already been noted, the Secretary urges that under the clear and unambiguous language of the defendant's constitution the 58 persons referred to above were ineligible to vote in the July 13 election.

Article VIII, § 5, of defendant's constitution clearly and explicitly provides that where a member fails to make a timely payment of dues he "shall be considered in arrears and suspended without notice." In answering plaintiff's interrogatories, defendant has indicated that a substantial [fol. 114] number of its members have at one time or another been automatically suspended, pursuant to Article VIII, § 5, for non-payment of dues. Further, the International's directive of February 7, 1963, (quoted on page

8, supra) clearly indicates that a Local is obligated to suspend a member who fails to make a timely payment of his dues.[5]

The Court finds that under the clear and unambiguous language of Article VIII, § 5, members who fail to make a timely payment of their dues are automatically in arrears and should be suspended without notice.

Under the clear and unambiguous language of Article VIII, § 5, a member who has fallen in arrears has "no rights except the right to be readmitted in accordance with Article VIII, § 7." To be readmitted "in accordance with" Article VIII clearly requires that the member pay the established readmission fee. Thus, the Court finds that under defendant's constitution once a member has fallen in arrears and has thereby lost his rights, he may only regain the same by paying the established readmission fee. Moreover, there is no provision in the defendant's constitution which gives the Secretary-Treasurer of the Local the right to waive the required readmission fee.

[fol. 115] As has previously been noted, 58 of the persons who voted in the July 13 election were either delinquent in the payment of their May, 1963 dues or had not paid or completed payment of mandatory readmission fees. The Court finds that these persons were not, under any reasonable construction of defendant's constitution, members in good standing and, therefore, were ineligible to vote in said election.

Defendant has urged that plaintiff's motion for summary judgment should be denied for the reason that there is an unresolved question of fact as to whether the practices followed by the defendant were reasonable. Defendant's position seems to be that even if it did not follow

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[5] Between May 1, 1962, and January 1, 1963, 357 members were so suspended; between January 1, 1963, and May 1, 1963, 229 were so suspended; between May 1, 1963, and June 8, 1963, 22 were so suspended; between June 8, 1963, and July 13, 1963, 73 were so suspended. (Defendant's answers to plaintiff's interrogatory No. 8.) The substantiality of these figures is readily apparent when viewed in relation to total membership figures. Defendant has indicated that it had 967 members on May 1, 1962, 730 on May 1, 1963, 717 on June 8, 1963, and 729 on July 13, 1963. (Defendant's answers to plaintiff's interrogatory No. 7.)

the eligibility standards of its constitution and bylaws, it must nonetheless be determined whether the standards actually followed were reasonable. This position lacks merit, for it seems clear that one of the basic purposes behind the election provisions of the Act was to require unions to comply with the provisions of their constitution and bylaws in the conduct of their elections. Where, as here, the conduct complained of cannot be justified under any reasonable construction of the union's constitution or bylaws, it would be most anomalous to hold that the conduct did not violate the Act because it was, in some abstract sense, "reasonable." [6]

[fol. 116] On January 27, 1966, the Court heard oral arguments on the plaintiff's motion for summary judgment. On that date counsel for the defendant presented to the Court a copy of a directive of the International Union dated January 17, 1966, and addressed to all local unions, district councils and members. The directive reads as follows:

"*RE: Right to Vote*"

"Dear Sirs and Brothers:

"The General Executive Board, at its November 29-December 10, 1965 meeting was made aware of a grave danger to our membership, which has developed as a result of a *misinterpretation* of the Uniform Local Union Constitution and Release # 1 of 1963, and which is threatening to deprive many members of long standing of their rights and benefits under the Union's Constitution and collective bargaining agreements, particularly the right, otherwise avail-

[6] It is clear from Mr. Mason's affidavit that special consideration was given to only those delinquent members who Mr. Mason felt were deserving; and, further, that in granting such special consideration Mr. Mason was not acting pursuant to any authority granted to him by the defendant's constitution or bylaws. Further, Mr. Mason did not maintain records pertaining to his actions. If the Court was required to view the conduct complained of herein in the abstract, it would be forced to conclude, on the basis of the affidavits, admission and answers to plaintiff's interrogatories, that said conduct was, as a matter of law, unreasonable.

able, under the Union's Constitution to vote in the Union's general election for the candidate of their choice.

"The General Executive Board was presented with the issue of whether or not members in good standing *on the day of election* must be deprived of their right to *vote on election day* because at one time or another during the course of their membership, dues which they offered late were accepted by the Local Union, and the Local Union remitted per capita tax within the Constitutional period to the International Union, as a result of which the member's good standing was not, in fact, interrupted.

"The General Executive Board, for years, knew of a long-standing practice in many Local Unions where per capita tax payments were being improperly forwarded to the International Union by Local Unions. Release # 1 of 1963 was directed principally toward advising Secretary-Treasurers of Local Unions on the proper conduct of their office, the payment of dues and the persons on whose behalf per capita tax should be forwarded to the International Union.

[fol. 117] "However, nothing contained in Release # 1 nor in the Union's Constitution, stated in terms or inferred, that such a member whose good standing was not interrupted should be deprived of his legal and Constitutional right, otherwise available, to vote when he approached the polling place on election day. Nor was this, in fact, the intent of the General Executive Board in issuing Release # 1, nor of the drafters of the Uniform Local Union Constitution.

"Indeed, to the contrary, the Board had consistently maintained the position throughout the years, that its Constitution must be interpreted as a *living document* in the light of the Union's history and tradition—giving due regard to its unique and real needs—not from a formalistic standpoint. It was never the intention of the Union in adopting its Constitution, or of the General Executive Board in issuing Release

1 or in otherwise interpreting its Constitution to *deprive members* of their right to vote. The Board had always interpreted its Constitution liberally to preserve the right of members to vote. Particularly, in dealing with problems in the election area, the Board had always placed substantial requirements over form. The Board will continue to adhere to this view.

"The Board was troubled by the misinterpretation of the Constitution and Release # 1, which threatens to deprive wholesale numbers of members of their right to vote under the Union's Constitution and the Act. First, it felt that such an interpretation was unduly infringing upon the prerogative of the Board to interpret its Constitution in a fair and responsible manner in the interest of the membership, and was seeking to substitute the judgment of persons outside the Union on the meaning of the Union's Constitution for that of the Union's governing body, which had been elected by the membership and charged with that responsibility.

"But, in the Board's view, the principal vice of this hypertechnical interpretation was that it completely ignored the unique, real problems confronting the Union and its membership.

"The Board in interpreting its Constitution, is charged with the responsibility of giving due regard to the unique problems confronting the membership.

[fol. 118] "In issuing Release # 1, it was attempting to instruct its Locals on solid financial practices to promote their long run interests. The Board adheres to that view and is in no way attempting to relieve Secretary-Treasurers from their obligations. The Board knew then and it knows now that if its Constitution was construed to disenfranchise such members, a very substantial percentage of the total membership would be deprived of their right to vote. It knew then and it knows now that if such a harsh interpretation was placed upon the Union's Constitu-

tion, it would result in depriving many tens of thousands of their members and their families of death benefits built up over the years and of pension rights under collective bargained pension plans throughout this country. Moreover, it knows that if the Union were to adopt the interpretation urged, it could only suspend those members which would simply mean that they would lose their benefits, accruing over the years and be required to pay a new initiation fee under the Union's Constitution as a new member. The Board flatly rejected the opportunity for the International Union collecting such a financial windfall and it instructed the Executive Officers to advise each affiliate of the following action and take whatever possible actions are necessary to defend the right of the membership to act in that regard.

"After due consideration, the Board

"'VOTED: In accordance with the power and authority vested in it by the International Union Constitution, Uniform Local Union Constitution, and Uniform District Council Constitution, that its Constitutional provisions shall not be interpreted to deprive members of their legal and constitutional right to vote in those instances where local unions have accepted dues late and remitted per capita tax within the Constitutional period to this International Union, so that the local unions were never notified by the International Union that such members were suspended. To the extent that anything contained in Release # 1 of 1963 can be construed to reach a contrary conclusion or to cast doubt upon this position, it is hereby modified to that extent nunc pro tunc.'

"All affiliates and members please take note and abide yourselves accordingly.

Respectfully and fraternally yours,

/s/ JOS. V. MORESCHI

/s/ PETER FOSCO"

[fol. 119] Presented to the Court, along with the above-quoted directive, was an affidavit of Robert J. Connerton, General Counsel of the International. In his affidavit Mr. Connerton states that the directive of January 17 is "a formal constitutional interpretation by the General Executive Board binding on all Local Unions and officers."

While the directive of January 17 may reflect an official action taken by the General Executive Board, the directions contained therein are ambiguous, inconsistent with the clear and unambiguous language of the Uniform Local Union Constitution, and, further, are in many respects inconsistent with the instructions given in the directive of February 7, 1963. As has previously been noted, the defendant clearly acted in violation of its constitution in allowing certain delinquent persons to vote in the July 13 election. The Court finds that the directive of January 17 does not, and cannot, exculpate the defendant from the consequences of its previously improper conduct.[7]

Defendant urges that, even if it is found that the defendant violated its constitution in the conduct of the July 13 election, plaintiff's motion for summary judgment must nonetheless be overruled for the reason that there is an unresolved question of fact as to whether the improper conduct "may have affected the outcome of the election" [fol. 120] within the meaning of Section 402(e) (2) of the Act. Defendant states that even if certain ineligible voters voted in the July 13 election it is not clear which candidate they voted for. Defendant's position seems to be that where ineligible votes have been cast it must be shown not only that it is mathematically possible that the outcome of the election was affected, but, also, that the manner in which the ineligible voters voted actually did affect the outcome of the election. Defendant evidently has failed to recognize, however, that Section 401(d) of

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[7] The Court is in no manner indicating what steps the International or the Local can now reasonably take to resolve any problems which might result from such previous misconduct. Further, the Court should point out that this opinion is limited strictly to a determination of whether certain persons had a *right to vote* in the July 13 election.

the Act required that the election in question be held by secret ballot. To require or allow inquiry into the manner in which certain persons have voted would be entirely inconsistent with the Act's requirement that the ballot be secret. The Court, therefore, finds that the Act's secret ballot requirement forecloses any inquiry into how particular persons voted. The Court further finds that if the number of ineligible votes cast is sufficient to make it mathematically possible that the outcome of the election was affected, this fact alone conclusively establishes the Act's requirement that the conduct complained of may have affected the outcome of the election.

As has previously been noted, the July 13 election was decided by 19 votes. In said election, 58 ineligible votes were cast. In light of what has been stated above, it is clear that the casting of these votes may have affected the outcome of the election.[8]

[fol. 121] The Court finds that, with regard to the portion of the complaint here under consideration, there remains no genuine issue as to any material fact. The Court further finds that the defendant, in the conduct of the July 13 election, violated Section 401(e) of the Act, and that such violation may have affected the outcome of said election. Plaintiff's motion for summary judgment will, therefore, be granted.

ELIGIBILITY OF CANDIDATES

Defendant's constitution requires candidates for office to have maintained continuous good standing in the International for a period of two years and continuous good standing in the Local for a period of one year (Article V, § 1). Prior to the June 8 election, the defendant's Election Committee considered the matter of the eligibility of candidates. In determining eligibility, the Committee re-

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[8] As has previously been noted, the 58 voters involved either (1) had not paid their May, 1963 dues as of July 13, 1963, or (2) had not paid or completed payment of mandatory readmission fees. The number of persons within either category would, standing alone, have been sufficient to have affected the outcome of the election.

ferred to the Secretary-Treasurer's per-capita tax reports and the membership book of each potential candidate. (Admission 12) As has previously been noted, the per-capita tax reports did not give an accurate indication of whether individual members were in good standing at the date of the nominations or election, and, further, did not accurately indicate whether members had been in good standing in the defendant union for the year preceding the election or in the International for two years preceding the election. (Admission 11). The Election Committee did not examine the individual members' ledger cards, which cards would have accurately reflected the members dues payments.

[fol. 122] Within one year prior to the nominations and election, Andrew Jackson, the winner of the July 13 election, had been in arrears in his dues payments for more than two months. (Admission 18.) As has previously been noted, once a member falls in arrears he automatically loses his good standing. To regain good standing he must, under Article VIII of defendant's constitution, remit to the union the established readmission fee.

Under the circumstances set out above, it is clear that Mr. Jackson had not been in continuous good standing in the International for two years and, further, had not been in continuous good standing in the Local for at least one year. A similar situation prevailed with regard to Mr. Ferry. (Admission 16.) It is clear, however, that Mr. Dial had been in continuous good standing in the International for two years and, further, had been in continuous good standing in the Local for at least one year.

In protesting the conduct of the July 13 election, Mr. Dial made no claim relative to the eligibility of candidates. It would appear, therefore, that there is a substantial question as to whether, under the reasoning of Judge Connell's opinion, the Secretary is precluded from attacking the election of July 13 on this basis. Since, however, the Court has already found that the July 13 election must be set aside on the basis of the ineligibility of certain voters, neither this question nor the question of whether the election should be set aside on the basis of the ineligibility of candidates (assuming that the Secretary

is not precluded from attacking the election on this basis) need be resolved.

[fol. 123] An order will be entered in accordance with this memorandum opinion. Since the July 13, 1963, election concerned a single office, and, further, since the defendant will obviously be holding a general election within several months, it is clear that many practical problems are presented with regard to the provisions to be contained in said order. The Court, therefore, requests that counsel meet within ten days and attempt to agree upon a final order which takes into account the practical problems involved. If the parties are able to agree upon an order, said order should be submitted to the Court on or before April 15, 1966. If the parties are unable to agree upon an order, the parties should inform the Court to this effect on or before the same date.

/s/ Frank J. Battisti
United States District Judge

[fol. 124]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil Action No. C 64-99

[File Endorsement Omitted]

W. WILLARD WIRTZ, Secretary of Labor,
United States Department of Labor, PLAINTIFF

-vs-

LOCAL UNION NO. 125, INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABORERS' UNION OF AMERICA, AFL-CIO, DEFENDANT

ORDER—Filed April 18, 1966

Upon consideration, after argument by opposing counsel,

IT IS ORDERED that plaintiff's motion for summary judgment, with regard to that portion of his complaint directed to the run-off election of July 13, 1963 for the office of Business Representative, is hereby granted.

IT IS FURTHER ORDERED that the run-off election conducted by the defendant on July 13, 1963 for the office of Business Representative is hereby declared to be null and void and set aside; that the next regularly scheduled election for the office of Business Representative will be held under the supervision of the plaintiff, as provided for in Section 402(c) of the Act (29 U.S.C. 482(c)) and in accordance with the Act and defendant's uniform local constitution as long as they are not inconsistent with the [fol. 125] provisions of the Act; that after such election has been held, the ballots canvassed and results announced, the successful candidate will be installed in office as defendant's Business Representative for a full constitutional term of office; that this action will hold on the docket of this Court pending completion of the nomination, election

and installation of the officer elected as hereby ordered; and that after completion of the nomination and election of said officer, if plaintiff certifies to the Court that said election was conducted in accordance with the provisions of the Act and defendant's constitution so long as they are not inconsistent with the provisions of the Act, the Court may thereupon, upon approval of such certification, enter a judgment declaring that such person has been elected to said office.

/s/ Frank J. Battisti
United States District Judge

APPROVED:

/s/ R. J. Rotatori
Attorney for Plaintiff

/s/ Mortimer Riemer
Attorney for Defendant

[fol. 126]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 17,344

[File Endorsement Omitted]

W. WILLARD WIRTZ, Secretary of Labor, United States Department of Labor, PLAINTIFF-APPELLANT

-vs-

LOCAL UNION NO. 125, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO, DEFENDANT-APPELLEE

ORDER VACATING JUDGMENT AND REMANDING WITH INSTRUCTIONS—Filed December 15, 1966

The Secretary of Labor brought this suit under Section 402 of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 482, to challenge the validity of a union general election held in June, 1963, and a runoff election held the following month. The district court, in an opinion reported at 231 F. Supp. 590, dismissed the Secretary's complaint insofar as it dealt with the general election on the ground that internal union procedures had not been exhausted in an effort to correct the alleged irregularities in that election, and the Secretary here contests the propriety of that dismissal.

Subsequent to the decision of the trial judge, a general election was held by the union in June, 1966. The present union officers hold their positions pursuant to this 1966 election and not the election challenged by the Secretary. Appellee contends, and the court agrees, that this fact renders moot the question on appeal, since the statutory remedies for election irregularities can serve no purpose here in light of the subsequent election which has been held. To prevent the district court decision herein held to be unappealable from serving as a precedent, the court will not dismiss the appeal as requested by appellee, but

will vacate the judgment of the district court dismissing a portion of the Secretary's suit and will remand with [fol. 127] instructions to dismiss the complaint as moot insofar as it relates to the 1963 general election. See *United States* v. *Munsingwear*, 340 U. S. 36 (1950).

The court deems it appropriate to cite here the following observation of the Second Circuit in the cases of *Wirtz* v. *Local Unions 410, 410 A, 410 B & 410 C, International Union of Operating Engineers* and *Wirtz* v. *Local 30, International Union of Operating Engineers*, decided August 1, 1966:

> As these cases illustrate, it is the delays incident to civil cases in the district courts which create the substantial likelihood that subsequent union elections will moot Title IV cases prior to appellate review. To prevent recurrence of such delays, we think the district courts should expedite the trial of Title IV cases to the greatest extent possible.

It is ORDERED that the judgment of the district court dismissing the portion of the Secretary's complaint dealing with the 1963 general election is vacated, and the case is remanded with instructions that said portion of the complaint be dismissed as moot.

Entered by Order of the Court

/s/ Carl W. Reuss
Clerk

[fol. 128]

SUPREME COURT OF THE UNITED STATES

No. 1117, October Term, 1966

W. WILLARD WIRTZ, Secretary of Labor, PETITIONER

v.

LOCAL UNION NO. 125, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO

ORDER ALLOWING CERTIORARI—May 15, 1967

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted. The case is placed on the summary calendar and set for oral argument immediately following No. 1115.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1967 270002 47